CLERK'S COPY 18569

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 440 155.

W. P. SMITH, PLAINTIFF IN ERROR,

vs.

THE ST. LOUIS AND SOUTHWESTERN RAILWAY COMPANY OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS OF THE SECOND SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

FILED NOVEMBER 14, 1899.

(17,563.)

(17,563.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 449.

W. P. SMITH, PLAINTIFF IN ERROR,

vs.

THE ST. LOUIS AND SOUTHWESTERN RAILWAY COMPANY OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS OF THE SECOND SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

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1 *Record from District Court.*

Caption.

THE STATE OF TEXAS, }
County of Tarrant. }

At a term of the district court (48th district), begun and holden within and for the county of Tarrant, at Fort Worth, on the 11th day of October, A. D. 1897, and which term of court adjourned on the 12th day of February, A. D. 1898, before the Honorable Irby Dunklin, judge thereof, the following cause came on for trial, to wit:

W. P. SMITH
vs.
ST. LOUIS — SOUTHWESTERN R'Y CO. OF TEXAS. } 14191.

Plaintiff's First Amended Petition.

Filed March 19, 1898.

W. P. SMITH
vs.
ST. LOUIS & SOUTHWESTERN R'Y CO. OF TEXAS. } Suit Pending in the District Court of Tarrant County, Texas.

To the honorable district court of Tarrant county, Texas:

W. P. Smith, hereinafter styled plaintiff, complaining of the St. Louis & Southwestern Railway Company of Texas, hereinafter styled defendant, leave of the court first had and obtained, files this his first amended original petition in lieu of his original petition filed herein September 30th, 1897, and with respect represents:

That the plaintiff is a resident citizen of Tarrant county, Texas, and that the defendant is a corporation duly incorporated, with an office and local agent, to wit, John Lehane, in Tarrant county, Texas, and that said defendant is a common carrier for hire,

2 and was at the times of matters and things hereinafter complained of engaged in the business of receiving and transporting freight and passengers, with a part of its line of railroad extending into Tarrant county, Texas.

And for cause of action herein plaintiff says that heretofore, to wit, on the 27th day of August, 1897, the St. Louis — Southwestern Railway Company, also a common carrier for hire, agreed and undertook to carry and transport, for a valuable consideration, to wit, the sum of fifty dollars, certain 46 head of cattle, hereinafter described, from the town of Plain Dealing, Louisiana, to Fort Worth, Tarrant county, Texas, and executed and delivered its original bill of lading in writing, binding and obligating itself to transport said cattle as aforesaid, and that defendant, The St. Louis & Southwestern Railway Company of Texas, accepted said cattle from said St. Louis & Southwestern Railway Co., under said bill of lading, from

Texarkana, Texas, and thereby agreed to transport and deliver the said cattle to the point of destination, namely, Fort Worth, Texas, to the owners thereof, said defendant's railroad being a line of railroad connecting with said St. Louis & Southwestern Railway Company's railroad at said Texarkana, Texas, and the same was a continuous shipment from Plain Dealing, Louisiana, to Fort Worth, Texas, the point of destination; that R. F. Miller, of Tarrant county, Texas, was the shipper or consignor in said bill of lading, and that said 46 head of cattle were consigned to this plaintiff, to whom the said defendant agreed to deliver said cattle at Fort Worth, Texas; that at all the times complained of said 46 head of cattle were owned in severalty by the following-named parties, the said cattle described and the owners thereof named as follows: J. S. Collier, of Tarrant county, Texas, at the time of the shipment of said cattle and at the time of their arrival at the place of destination, owned and possessed five cows, two cows and calves, two 2-year-old heifers, one two-year-old steer, 2 one-year-old steers, one two-year-old
3 bull, one four-year-old bull; that at the time of the shipment and of the arrival at destination at Fort Worth, Texas, W. P. Smith owned and possessed of said 46 head of cattle two cows, one cow and calf, two 2-year-old steers, one 3-year-old bull.

That J. A. J. Reeves, of Tarrant county, Texas, owned and possessed of said 46 head of cattle, at the time of said shipment and their arrival at destination at Fort Worth, Texas, three one-year-old steers, three cows, two cows with calves, one 1-year-old heifer, one 1-year-old steer, and one two-year-old steer.

That S. P. Clark, of Tarrant county, Texas, owned and possessed of said 46 head of cattle, at the said time of shipment and arrival at destination, two 3-year-old steers.

That H. P. Miller, of Tarrant county, Texas, owned and possessed of said 46 head of cattle, at the time of shipment and arrival at destination, one cow and calf, one 1-year-old steer, and one 2-year-old steer.

That W. A. Maddox, of Tarrant county, Texas, owned and possessed of said 46 head of cattle, at the time of shipment and arrival at destination at Fort Worth, Texas, two cows, one 1-year-old steer, one 2-year-old steer.

That said R. F. Miller was acting for himself and as the agent of the other co-owners of said cattle in the shipment of same to the said W. P. Smith, who, as consignee, was acting in said capacity for himself as well as the other owners of said 46 head of cattle.

That on or about the 29th day of August, 1897, said 46 head of cattle arrived at Fort Worth, Tarrant county, Texas, and were placed by the defendant railway company in its stock pens at said point, and that at said time the owners of said cattle, on being notified of the arrival of same and while the same were in defendant's stock pens, demanded from said defendant the delivery of said cattle by said railway company, said demand being made by S. P.
4 Clark, of Tarrant county, Texas, acting for himself and for the other owners of said cattle.

That at the time said demand was made the said Clark offered to

pay the freight charges, to wit, the sum of fifty dollars, due for the transportation of said cattle, to the said defendant railway company, and the said tender of said charges was refused by said defendant, said tender having been made to John F. Lehane, the local freight agent of defendant at Fort Worth, Texas, and defendant refused to deliver said cattle to the owners thereof, and ever since have refused to deliver the same to the owners or this plaintiff, whereby said cattle became wholly lost to said owners thereof; that the refusal of the acceptance of said tender and the delivery of said cattle was on or about the 29th day of August, 1897; that said 46 head of cattle were the same which were valued by James D. Farmer, of Fort Worth, Texas, at the stock pens of said defendant railway company in Fort Worth, Texas, at or about the time of said refusal of said tender of the freight charges and delivery of said cattle.

That after the failure and refusal of the defendant railway company to deliver said cattle, as aforesaid, and before the filing of this suit, S. P. Clark, J. A. J. Reeves, J. S. Collier, and H. F. Miller (the latter acting by and through his agent, S. P. Clark), and W. A. Maddox, for a valuable consideration, transferred, set over, and assigned to W. P. Smith, the plaintiff herein, all of their right, title, and interest in the cause of action arising out of the failure of said railway company to deliver said cattle, and granted, bargained, and sold to the said plaintiff herein all of their right, title, and interest in said 46 head of cattle, the same described as the 46 head of cattle valued by Jas. D. Farmer at the stock pens of the St. Louis & Southwestern Railway Company at Fort Worth the — day of ——, 1897; that the assignment of said interest in said cause of action and of said cattle to this plaintiff is in writing.

5 That on account of the failure and refusal of said defendant railway company to deliver said cattle, as aforesaid, the owners thereof were damaged in the sum of seven hundred dollars, for that said cattle at the time of said refusal, at the point of destination, to wit, Fort Worth, Tarrant county, Texas, were of the reasonable fair market value of $700, and that on account of the loss of said cattle and the refusal as aforesaid this plaintiff, who is now the owner of said cattle *and* this cause of action, as hereinbefore shown, has been damaged in the sum of $700, for which he sues.

Wherefore, premises considered, plaintiff prays as in his original petition for judgment for his damages, legal interest, and costs of suit, and for such other and further relief, equitable or legal, special or general, as he may be entitled to.

HENDRICKS & HENDRICKS,
Attorneys for Plaintiff.

Filed March 19, 1898.

R. H. McNATT,
District Clerk.

Defendant's First Amended Answer.

Filed March 21, 1898.

In the District Court, Tarrant County, Texas, 48th Judicial District.

W. P. SMITH
vs. } 14191.
ST. LOUIS & SOUTHWESTERN R'Y CO. OF TEXAS.

Now comes defendant and, by leave, amends its original answer filed herein February 9th, and for amendment says:

Defendant excepts to plaintiff's petition and says it is insufficient to entitle him to recover, and of this it prays judgment.

For answer defendant denies all and singular the allegations in said petition and demands proof, and of this puts itself upon the country.

6 Further answering, defendant says that if plaintiff ever made any contract, as claimed in his petition, then he and his assignors made such contract knowing that it was in violation of law.

That at the time and long before said pretended contract was entered into it was a violation of the laws of the State of Texas to transport or bring Louisiana cattle into the State of Texas; that the cattle involved in this controversy were Louisiana cattle, and were delivered to a connecting line of defendant at Plain Dealing, Louisiana, on August 27, 1897, and the transportation thereof demanded by plaintiff and his assignors.

That therefore, to wit, on June 7, 1897, the Live Stock Sanitary Commission of Texas, acting within the scope of its authority, made, among others, the following order relative to bringing into Texas any cattle from the State of Louisiana, to wit: "From this time forth until the 15th day of November, 1897, no cattle, mules, or horses are to be transported or driven into the State of Texas from the State of Louisiana. The Live Stock Sanitary Commission of the State of Texas hereby order that any violation of the aforesaid rules and regulations by moving any cattle, mules, or horses * * * out of Louisiana into the State of Texas is contrary to said rules and regulations, and shall be an offense and punishable as provided by the laws of the State of Texas."

That immediately thereafter and on the same date the governor of Texas duly published and promulgated according to law the said rules and regulations of said commission, and declared that the quarantine line, rules, and regulations, as in said orders were set forth and recited, should be in full force and effect from and after the date last aforesaid.

That plaintiff and his assignors, with due notice and knowledge of said quarantine regulations existing against the importa-
7 tion of Louisiana cattle into Texas, offered for shipment and demanded the transportation of said cattle into this State,

and defendant and its connecting line which accepted said shipment were both without notice and were ignorant of said quarantine regulations at the time of accepting and transporting the said cattle; that the said pretended contract was and is illegal and void, and therefore cannot form the basis of this action. Further answering, defendant says it received said cattle involved in this controversy at Texarkana, Texas, from the carrier which brought them to that station from Plain Dealing, Louisiana, as it was compelled under the law to do when freight of any character is tendered to it in apparent good order; that defendant and its connecting carrier received and transported said cattle without notice or knowledge of the quarantine regulations which were then in force against the transportation into Texas of Louisiana cattle, but that plaintiff and his assignors had notice and knowledge of said quarantine at and before the time of shipping said cattle; that after the arrival of said cattle at their destination, when defendant for the first time learned of the existence of the quarantine regulation aforesaid, it immediately made application to the Live Stock Sanitary Commission of Texas, asking its permission and consent to defendant's delivery of the cattle to plaintiff, which consent was promptly refused, and said cattle were ordered by said commission to be taken by the defendant out of the State, and defendant was compelled by law to return said cattle to the station and to the carrier from which it received them, and which it promptly did in obedience to the law aforesaid, and its connecting carrier returned said cattle to Plain Dealing, Louisiana, at which point the shipment originated, and there tendered them to plaintiff and his assignors, and they then and there refused to receive them or have anything to do with them.

That, having knowledge of such quarantine regulations at and before the shipment by him and his assignors of said cattle,
8 the said plaintiff and his assignors assumed all risk and expense of having said cattle returned to them at the point of origin and of having their stay in Texas forbidden by the proper and legally constituted authorities of the law, as it was done in this case, and plaintiff and his assignors thereby contributed to and brought upon themselves whatever, if any, damages they have sustained, which defendant says is none; but if it be held that defendant had the like character of notice with plaintiff as to said quarantine regulations, then defendant says plaintiff was alike guilty of negligence contributing to any damages arising from this shipment, and is therefore *nore* entitled to recover.

Further answering, defendant says that by the terms of the contract under which it transported said cattle it was to become liable for no other damage that might be occasioned to said shipment than such as occurred while in its possession, and it is further stipulated and agreed in said contract that in case of total loss of any live stock covered by said contract from any cause for which defendant would be liable payment should be made therefor on the basis of the actual cash value thereof at the time and place of shipment, which in this case was at Plain Dealing, Louisiana. Defendant says it is not liable to plaintiff in any sum whatever, and

that no damage occurred to said cattle while in its possession, but if liable for any amount under said contract, it is only liable for the market value of said cattle at Plain Dealing, Louisiana, which did not exceed the sum of $250.00.

Further answering, defendant says that if it is liable to plaintiff for any sum the same should be credited with the freight due defendant on said shipment and let same equal *to* the sum of $50, pleaded as a set-off against plaintiff; also all expense for feeding and taking care of said cattle, which aggregates the sum of $91.00, and is likewise pleaded as a set-off against plaintiff's recovery.

9 PERKINS, GILBERT & PERKINS AND
P. P. MASON, *Attorneys for Defendant.*

Filed March 21st, 1898.

R. H. McNATT,
District Clerk.

Plaintiff's Supplemental Petition.

Filed Ap'l 5, 1898.

W. P. SMITH
vs.
ST. L. & S. W. R'Y CO. } Suit Pending in the 48th Judicial District of Texas.

Now comes the plaintiff and, with leave of the court, files this his first supplemental petition, and by way of replication to defendant's first amended original answer, filed herein March 21st, 1898, says:

1st. Plaintiff excepts to defendant's special answer and plea setting up that the alleged shipment of the cattle described in plaintiff's petition was in violation of the laws of Texas and of the order of the Live Stock Sanitary Commission of Texas and the proclamation of the governor of Texas made in pursuance thereof, and says that the same is insufficient in law for the reason that said order of said sanitary commission and said proclamation, if made, was void and in violation of section 8 of article 1 of the Constitution of the United States, and an attempt to regulate and impose restrictions upon commerce between the State of Louisiana and the State of Texas, for said special plea and answer shows upon its face that the shipment of said cattle was a continuous shipment from Plain Dealing, State of Louisiana, in and to the State of Texas, and fails to show that the cattle in controversy were afflicted with the disease of charbon or anthrax, as named in said order of said commission: and of this he prays the judgment of the court.

10 2nd. For further exception plaintiff objects to defendant's special plea setting up that the contract of shipment stipulated that "*that* the measure of damages should be made therefor on the basis of actual cash value thereof at the time and place of shipment, which was at Plain Dealing, La.," and says that said plea is insufficient in this, that the same shows to be, if true, contrary to public policy of this State and its laws, and is therefore not binding upon plaintiff, but void; and of this he prays the judgment of the court.

3rd. Plaintiff further excepts to that portion of defendant's said answer setting up that the measure of damages is the market value of said cattle at Plain Dealing, La., under the facts of this case and as a matter of law, but fails to state such facts as would show that said measure of damages is the value of cattle at said place of shipment: and of this he prays the judgment of the court.

HENDRICKS & HENDRICKS,
Att'ys for Defendant, *W. P. Smith.*

For further answer to defendant's special pleas, plaintiff denies all and singular the allegations in each of the same contained, and demands strict proof of the same; and of this he puts himself upon the count-y.

HENDRICKS & HENDRICKS,
Att'ys for Plaintiff, W. P. Smith.

For special plea and replying to so much of defendant's answer as seeks to justify defendant's conduct in refusing to deliver the cattle, the value of which is sued for herein, by setting up and claiming said shipment was in violation of the quarantine regulations of the State of Texas and of the order of quarantine commission of said State and the proclamation of the governor of Texas putting said order in force, plaintiff says that said order and said proclamation fails to state and show that all the cattle in the State of Louisiana are afflicted with the diseases named in said proclamation, and plaintiff says that in truth and in fact the said cattle
11 involved in this suit were not afflicted with said diseases of charbon or anthrax, but were in all respects *were* sound and healthy, and were in no sense capable or liable to communicate said diseases of charbon or anthrax to other cattle, and that said order of said quarantine commission and said proclamation *were* for these reasons could not and did not apply to the shipment of said cattle, and to so construe said order and said proclamation would be a restriction and a burden on the commerce between the State of Louisiana and the State of Texas, and in violation of section 8, article 1, of the Constitution of the United States; and of this he prays the judgment of the court.

HENDRICKS & HENDRICKS,
Attorneys for Plaintiff.

Filed April 5th, 1898.

R. H. McNATT,
District Clerk.

Judgment, April 14, 1898.

W. P. SMITH
vs.
ST. LOUIS & SOUTHWESTERN R'Y CO. OF TEXAS. } 14191.

Judgment, April 14th, 1898.

The above numbered and entitled cause coming on this day to be heard before the court without a jury, and after the *instruction* of

the evidence and the argument of counsel on the facts and the law, the court is of the opinion that the law is for the plaintiff, and that said plaintiff ought to recover by reason of the premises; and it appearing to the court that the plaintiff, W. P. Smith, has been damaged in the sum of $578.10 by the defendant in the manner alleged in plaintiff's petition, it is therefore ordered, adjudged, and decreed by the court that the plaintiff, W. P. Smith, do have and recover of and from the defendant, Saint Louis — Southwestern
12 Railway Company of Texas (a corporation), the said sum of five hundred seventy-eight & $\frac{10}{100}$ dollars, with interest thereon from this date at the rate of six per cent. per annum, for all of which let execution issue.

Conclusions of Fact and Law.

Filed April 14, 1898.

W. P. SMITH
vs.
ST. LOUIS & SOUTHWESTERN RAILWAY Company of Tex.
} Suit Pending in the District Court of Tarrant County, Texas.

Conclusions of fact and law found by the court in the above numbered and entitled cause.

Findings of Fact.

First. I find that the shipment of the cattle in controversy was upon a through bill of lading issued by the St. Louis Southwestern R'y Co., and that Plain Dealing, Louisiana, was the initial point of shipment and Fort Worth, Tarrant county, Texas, the point of destination.

2nd. The defendant, The St. Louis Southwestern Railway Company of Texas, connected with the former-named railroad at Texarkana, Texas, and the cattle were delivered to defendant at Texarkana by the connecting line, and the same was a through and continuous shipment from said Plain Dealing, Louisiana, to place of destination.

3rd. The bill of lading was executed on the 27th day of August, 1897, and the cattle reached Fort Worth on the evening of the 28th of said month, and upon their arrival the owners of the cattle were ready to receive the same, and said owners at Fort Worth, Texas, tendered the amount of freight, to wit, fifty dollars, to the defendant railway company and demanded the cattle, and said tender of freight charges and the demand for the delivery of said cattle at Fort Worth, Texas, were refused by defendant.

13 4th. The cattle remained in the pens of defendant until August 31st, 1897, and the stock yards at Fort Worth refused to receive said cattle in their pens on account of the proclamation of the governor of Texas quarantining Louisiana cattle, and defendant also made application to the Live Stock Sanitary Commission of Texas for permission to deliver said cattle to the owners

thereof, and on account of the governor's proclamation against Louisiana cattle the same was refused, and thereafter the defendant shipped said cattle back to Texarkana, Texas, and there delivered them to the line of railway from which defendant received them, which line returned said cattle to Plain Dealing, La., there tendered said cattle to the shippers, who refused to receive them, and said connecting line, after properly advertising them at the place from which they were received, sold said cattle and tendered $299.20, the proceeds thereof, less pasturage charges at Plain Dealing, La., to the owners of said cattle, which was also refused.

5th. At the time said cattle were received at Plain Dealing, La., and at the time of their arrival at Fort Worth, and of the tender of freight charges made to defendant by the owners of said cattle, the Live Stock Sanitary Commission had recommended the adoption of the following regulation with reference to Louisiana cattle: "The Texas Live Stock Commission has reason to believe that charbon or anthrax has or is liable to break out in the State of Louisiana. From this time forth until the 15th day of November, 1897, no cattle, mules, or horses are to be transported or driven into the State of Texas from the State of Louisiana;" and C. A. Culberson, governor of Texas, on the 5th day of June, 1897, in conformity with law, regularly promulgated said order and regulations of said commission by proclamation, a full copy of which is hereto attached and made a part hereof, and the quarantine thereby established against all cattle in Louisiana was in full force at the time of the shipment in question, if the same was a valid quarantine regulation.

14 6th. The bill of lading under which said cattle were shipped contained the following stipulation: "That in case of total loss of any of the live stock covered by this contract from any cause for which the first party will be liable, payment thereof will be made on the basis of the actual cash value at the time and place of shipment, but in no case to exceed $100 for each horse, pony, gelding, mare or stallion, mule or jack, $50 for each ox, bull or steer, $30 for each cow, $10 for each calf or hog, $3 for each sheep or goat, and in case of injury or partial loss the amount of damages claimed shall not exceed the same proportion." The contract for the shipment of the said cattle was in writing and was signed by the carrier, and also by R. F. Miller, shipper, who acted for himself and as agent for the other owners of the cattle shipped, and, among other things, said contract contains the following agreement: "That for the consideration and for the mutual covenants and conditions herein contained, the said first party" (meaning the initial carrier) "will transport for the said second party the live stock described below and the parties in charge thereof as hereinafter provided, viz: one car said to contain forty-six head of stock cattle from Plain Dealing, La., station to Fort Worth station, consigned to W. P. Smith, at the rate of fifty dollars per car from Plain Dealing, La., to Fort Worth, Texas, subject to minimum weights and length of car specified and provided for in tariff; said rate being less than the rate charges for shipment transported at carrier's risk, for which

reduced rate and other considerations it is mutually agreed between the parties hereto as follows:

First. It is mutually agreed * * * if the destination of such cars be beyond the line of the initial carrier, then said initial carrier agrees and it and each connecting carrier in turn is hereby authorized to deliver said cars to its connecting carrier for transportation under the terms, stipulations, limitations and agree-
15 ments herein contained, and each and every carrier receiving said cars for transportation shall be deemed to adopt the terms and conditions hereof, and assume the like liabilities, and shall be entitled to all the provisions, exemptions from and limitations of liability and other stipulations governing the measure and adjustment of damages herein contained."

I further find that said cattle were traded for in exchange for horses and mules, no money being paid for same, and were shipped after the promulgation establishing the quarantine regulation above mentioned.

Seventh. All the interests of the shippers and owners of said cattle and the proceeds thereof and all the claims arising out of the transactions involved in this suit had been transferred before suit by the respective owners of said cattle, to wit, S. P. Clark, W. A. Maddox, H. P. Miller, J. S. Collier, and J. A. J. Reeves, to the plaintiff herein, and he is now the owner of all the claims arising therefrom, and said cattle were Louisiana cattle, traded for in and around Plain Dealing, La., and at the time they were received by defendant at Texarkana defendant had no actual notice of the orders of the live stock commission and the governor's proclamation, but the owners of said cattle did have actual knowledge of the promulgation of the above-mentioned proclamation of the governor.

8th. It is agreed in this case, by written agreement on file, that there were 46 head of cattle comprehended within this shipment, of age and character as follows: 18 cows, six of which had calves following them; seven one-year-old steers, three heifers two years old each, six two-year-old steers, one heifer one year old, one bull two years old, one bull three years old and one four years old, and two three-year-old steers; and I further find that the actual fair market value of said cattle at the time of their arrival in Fort Worth and the refusal of the tender of freight charges in
16 the Fort Worth market was the sum of ($610) six hundred and ten dollars, and further find that the amount of freight due defendant is the sum of fifty dollars.

9th. The actual cash fair market value of said cattle at the time and place of shipment, to wit, Plain Dealing, La., was the sum of $299.20.

10th. Defendant railway company and its connecting line at Texarkana are common carriers for hire.

From the above facts I find the following conclusions of law, to wit:

1st. The quarantine regulations above mentioned, established by the proclamation of the governor of the State, is a regulation of or an interference with interstate commerce in that its effect is to pro-

hibit the importation of all cattle from the State of Louisiana into the State of Texas, whether affected with or capable of communicating the diseases mentioned in said proclamation or not, and is therefore void as being in contravention of section 8 of article 1 of the Constitution of the United States. Had the Live Stock Sanitary Commission of the State found upon investigation that charbon or anthrax had broken out among the entire cattle of the State of Louisiana, and that all cattle of the State of Louisiana were liable to communicate either of said diseases to cattle of the State of Texas, and had said proclamation of the governor been based upon said finding, then, I think, it would have been in law a police regulation of no greater scope than necessary to the protection of cattle in the State of Texas, and therefore valid, even though it did interfere with interstate commerce.

2nd. The stipulation in the contract of shipment limiting the damages in case of total loss of cattle to the actual cash value thereof at the time and place of shipment to a fixed sum per head is contrary to law, and therefore void, the correct measure of dam-
17 ages in such case being the reasonable market value of the cattle so lost at the point of destination.

3rd. The plaintiff is entitled to recover of the defendant the sum of $610, the value of the cattle lost by him at the time and place of destination, less the sum of fifty dollars freight charges due defendant for said shipment, leaving a balance of $560, together with interest thereon from August 28, 1897, up to the present time, at the rate of six per cent. per annum, making a total of $578.10, and judgment is rendered accordingly.

IRBY DUNKLIN, *Judge.*

In the District Court of Tarrant County, Texas, 48th District.

W. P. SMITH
vs.
ST. LOUIS — SOUTHWESTERN RAILWAY COMPANY OF TEXAS. } 14191.

It is hereby agreed by and between parties plaintiff and defendant that the hereto-attached copy (marked Exhibit A) of the proclamation of the governor of Texas, dated the 5th day of June, 1897, may be used in evidence in this cause, subject only to such objections as the original, duly authenticated and proved, would be subject to.

This February 17th, 1898.

HENDRICKS & HENDRICKS,
Attorneys for Plaintiff.
PERKINS, GILBERT & PERKINS,
Attorneys for Defendant.

(EXHIBIT A.)

Proclamation.

Whereas the Live Stock Sanitary Commission of Texas has this day recommended the adoption of the following regulations:

"The Live Stock Sanitary Commission of the State of Texas have been reliably informed that cattle, mules and horses in
18 southern portion of Jefferson county, State of Texas, are affected with a disease known as charbon or anthrax, and are liable to impart such disease to cattle, mules and horses ranging in upper portion of Jefferson and other counties, from this time forth to the fifteenth day of November, 1897, no cattle, mules or horses, are to be transported or driven north or west of Taylor and Salt bayous, said bayous running across the southern portion of Jefferson county, State of Texas. This order is given for the purpose of quarantining all cattle, mules, and horses south and east of said Taylor and Salt bayous. The Texas Live Stock Commission has reason to believe that charbon or anthrax has or is liable to break out in the State of Louisiana. From this time forth to the 15th day of November, 1897, no cattle, mules or horses are to be transported or driven into the State of Texas from the State of Louisiana. The Live Stock Sanitary Commission of the State of Texas hereby order that any violation of any of the aforesaid rules and regulations by moving of any cattle, mules or horses north of said bayous, or out of Louisiana into the State of Texas, is contrary to said rules and regulations, and shall be an offense and punishable as provided by the laws of the State of Texas."

Now, therefore, I, C. A. Culberson, governor of Texas, in conformity with the provisions of chapter 7, title 102, of the Revised Statutes of Texas of 1895, do hereby declare that the quarantine lines, rules and regulations set forth in the above-recited order of the Live Stock Sanitary Commission of Texas shall be in full force and effect from and after this date.

In witness whereof I have hereunto set my hand, and caused the seal of State to be affixed at Austin, this 5th day of June, A. D. 1897.

[SEAL.]

C. A. CULBERSON,
Governor of Texas.

By the governor:

J. W. MADDEN,
Secretary of State.

19 Filed April 14th, 1898.

R. H. McNATT,
District Clerk.

Defendant's Motion for New Trial.

Filed April 16, 1898.

In the District Court, 48th Judicial District, Tarrant Co., Texas.

W. P. SMITH
vs.
ST. LOUIS — SOUTHWESTERN R'Y CO. OF TEXAS. } 14191.

Now comes the defendant and moves the court to set aside the judgment herein rendered on the 14th day of April, 1898, and to grant it a new trial for the following reasons:

1. Because the court erred in holding that the quarantine statute of Texas, and the orders and regulation and proclamation thereunder promulgated in accordance with law by the Live Stock Sanitary Commission, and the proclamation of the governor of Texas, is null and void, because it is a regulation of or an interference with interstate commerce and in contravention of section 8, article 1, of the Constitution of the United States, and because said statute and the orders of the Live Stock Sanitary Commission of Texas and the proclamation of the governor are merely police regulations adopted and promulgated for the protection of the live-stock interests of the State of Texas, and are binding and valid as police regulations, and are not in contravention of section 8, article 1, of the Constitution of the United States or any other provision of that instrument.

2nd. Because the court erred in holding that the stipulation in the contract of shipment as found in his findings of fact, to wit, "that in case of a total loss of any of the live stock covered by this contract from any cause for which the first party will be liable, payment will be made thereof on the basis of the actual cash value at the time and place of shipment," is not a valid and binding
20 stipulation in a contract such as this is, and in holding that the measure of damages in this case is the reasonable market value of the cattle so lost at destination.

3. Because the court erred in holding that plaintiff is entitled to recover the market value of said cattle at Fort Worth, and because, even if the statute, orders, and proclamation of the governor be unconstitutional and void, plaintiff in this cause is only entitled to recover the market value of the cattle at the time and place of shipment, found by the court to be $299.20, which was tendered to plaintiff, and the court erred in not rendering judgment upon his findings of fact in favor of defendant and for its costs.

P. P. MASON,
PERKINS, GILBERT & PERKINS,
Attorneys for Defendant.

Filed April 16th, 1898.

R. H. McNATT,
District Clerk.

Order on Motion for New Trial, April 16, 1898.

W. P. SMITH
vs.
ST. L. & S. W. R'Y CO. OF TEX. } 14191.

Order on motion for new trial, April 16th, 1898.

This day came the parties, by their respective attorneys, and then came on to be heard the defendant's motion for a new trial filed herein; and the court having heard said motion and being fully advised in the premises, it is the opinion of the court that the law is for the plaintiff. It is therefore ordered by the court that said motion be, and the same is hereby, overruled; to which ruling of the court the defendant excepts and in open court gives notice of appeal to the court of civil appeals for the second supreme judicial district of Texas.

21 *Appeal Bond.*

Filed May 3, 1898.

W. P. SMITH
vs.
ST. LOUIS — SOUTHWESTERN RAILWAY COMPANY OF TEXAS. } 14191.

Whereas in the above numbered and entitled cause pending in the 48th judicial district court of Tarrant county, Texas, and at a regular term of said court, to wit, on the 14th day of April, 1898, the said W. P. Smith recovered judgment against the said St. Louis — Southwestern Railway Company of Texas for the sum of five hundred and four dollars and $\frac{31}{100}$ dollars ($504.31), with interest thereon from the 28th day of August, 1897, at the rate of 6% per annum and all costs of suit, from which judgment the said St. Louis — Southwestern Railway Company of Texas has taken an appeal to our court of civil appeals for the second supreme judicial district of Texas, and desires to suspend the execution of said judgment during the pendency of said appeal:

Now, therefore, we, St. Louis — Southwestern Railway Company of Texas, as principal, and N. Harding and W. G. Turner, as sureties, acknowledge ourselves bound to pay W. P. Smith the sum of fourteen hundred dollars, conditioned that the said Saint Louis — Southwestern Railway Company of Texas, appellant, shall prosecute its appeal with effect, and in case the judgment of the supreme court or the court of civil appeals shall be against it, it shall perform its judgment, sentence, or decree, and pay all such damages as said court may award against it.

Witness our hands this 30th day of April, A. D. 1898.

ST. LOUIS — SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
By J. E. GILBERT, *One of Its Attorneys.*
W. G. TURNER.
N. HARDING.

22 Approved May 3rd, 1898.

R. H. McNATT,
District Clerk.

Filed May 3rd, 1898.

R. H. McNATT,
District Clerk.

Assignment of Errors.

Filed May 26, 1898.

In the District Court, 48th Judicial District.

W. P. SMITH
vs.
ST. L. — S. W. R'Y CO. OF TEXAS.

Now comes the defendant in the above numbered and entitled cause and assigns the following errors of law:

1st. The honorable district judge erred in his first conclusion of law in holding that "the quarantine regulations above mentioned established by the proclamation of the governor of the State is regulation of or interference with interstate commerce, in that its effect is to prohibit the importation of all cattle from the State of Louisiana into the State of Texas, whether effected with or capable of communicating the disease mentioned in said proclamation or not, and is therefore void as being in contravention of section VIII, article 1, of the Constitution of the United States."

His reason for thus holding which immediately follows is illogical and untenable. The quarantine law as promulgated and set in operation by said proclamation was valid and not in contravention of the Constitution of the United States or any clause or section in that instrument.

2. The honorable district judge erred in his second conclusion of law that "the stipulation in the contract of shipment limiting the damages in case of total loss of the cattle to the actual cash value at the time and place of shipment to a fixed sum per head is contrary to law, and therefore void, and that the correct measure of damage in such cases should be the reasonable market value of the
23 cattle so lost at the point of destination." The law is exactly the reverse of his honor's holding.

3rd. The honorable district judge erred in his third and last conclusion of law in rendering judgment for the plaintiff for $610, the value of said cattle at the place of destination, less freight charges, etc.

If plaintiff was entitled to recover in any sum, the amount under the contract of shipment should have been the value of the cattle at the time and place of shipment found by the court in his ninth finding of fact to be $299.20. It was error to render any judgment for plaintiff. The judgment should have been for defendant. For these errors the defendant insists that the judgment of the district

court should be reversed and judgment for the defendant be rendered by this honorable court.

PERKINS, GILBERT & PERKINS AND
P. P. MASON, *Attorneys for Defendant.*

Filed May 26th, 1898.

R. H. McNATT,
District Clerk.

Additional Assignment of Errors.

Filed June 1, 1898.

In the District Court, 48th Judicial District.

W. P. SMITH
vs. } 14191.
ST. LOUIS — SOUTHWESTERN R'Y CO. OF TEXAS.

Now comes appellant and files the following additional assignments of error;

The court erred in holding that the quarantine statute of Texas and the orders, regulations, and proclamations thereunder promulgated, as shown in this case to have been done, are and were null and void, because in contravention of section 8, article 1, of the Constitution of the United States.

24 1. Because the statute of Texas, the orders of the Live Stock Sanitary Commission, and the proclamation of the governor are and were mere police regulations, and therefore valid and binding upon the parties to this action.

2nd. Because the Live Stock Sanitary Commission and the governor found as a matter of fact that the conditions authorizing the issuance of the orders and proclamation, as shown to have been done in this case, existed at the time and before they were issued, and there is no evidence tending to show that said findings by said officials were not true, and the facts will be conclusively presumed to exist in the absence of evidence to the contrary. Therefore the findings and judgment of the court are contrary to the law and evidence.

P. P. MASON,
PERKINS, GILBERT & PERKINS,
Attorneys for Appellant.

Filed June 1st, 1898.

R. H. McNATT,
District Clerk.

Additional Assignment of Errors.

Filed July 1, 1898.

W. P. SMITH
vs.
ST. LOUIS — SOUTHWESTERN R'Y CO. OF TEXAS.

Third. The court erred — that the defendant was liable in damages for obeying the laws of this State and the orders and proclamations by its constituted authorities, because it is the duty of citizens of the State to obey said laws and orders, even if unconstitutional, until they have been declared invalid by a competent tribunal, and for such obedience the citizen is neither liable criminally nor in civil damages.

Fourth. The court erred in holding appellant liable for obeying a law which had not been declared unconstitutional until the
25 decision in this case, because the laws of a State are presumed to be valid until judicially declared void, and because appellee by his own acts was guilty of a violation of law in shipping the cattle into the State, and acted with full knowledge of the orders and proclamation promulgated according to law, and contributed and brought about whatever damages he sustained.

P. P. MASON,
GILBERT, PERKINS & PERKINS,
Attorneys for the St. Louis — Southwestern Railway Company of Texas.

Filed July 1st, 1898.

R. H. McNATT,
District Clerk.

Bill of Costs.

W. P. SMITH
vs.
ST. L. — S. W. R'Y CO. } 14191.

Clerk's fees.	Plaintiff.	Defendant.
Filing and docketing	.35	
Issuing citations	1.50	
Recording returns	.75	
Filing papers	.40	1.05
Certificates	....	.25
Issuing subpœnas	.85	
Motions	....	.30
Entering appearances	.15	.15
Entering continuances	.20	
Entering orders	.75	.75
Final judgment	.75	
Taxing costs	.25	

Issuing execution and ret	....	
Appeal bond	....	1.60
Transcript	....	14.00
Brief & certif	....	.60
Issuing notices	....	1.50
Total clerk's fees	$5.95	$20.20

26 Sheriff's fees.	Plaintiff.	Defendant.
Executing citations	1.60	
Executing subpœnas	7.60	
Executing notices	....	1.10
Sheriff's jury fee	.50	
Sheriff's costs	9.70	1.10
Notary fees, W. P. Boggs, N. P.	....	11.00
Clerk's costs brought over	5.95	20.20
Total	$15.65	$32.30

$47.95.

Certificate.

THE STATE OF TEXAS, }
County of Tarrant. }

I, R. H. McNatt, clerk of the district court of Tarrant county, Texas, do hereby certify that the above and foregoing is a true and correct copy of all the proceedings had in said cause No. 14191, W. P. Smith *vs.* St. Louis — Southwestern Railway Company of Texas, as the same appears on file and of record in my said office.

Given under my hand and seal of said court, at office, in the city of Fort Worth, Texas, this the 14th day of July, A. D. 1898.

[L. S.] R. H. McNATT,
Clerk District Court, Tarrant County, Texas.

Indorsement.

Indorsed: No. 3106. St. L. — S. W. R'y Co., appellant, *vs.* W. P. Smith, appellee. From the district court of Tarrant county.
27 Applied for by P. P. Mason, attorney for appellant, on the 1st day of July, 1898, and delivered to P. P. Mason on the 14th day of July, 1898. R. H. McNatt, clerk district court, Tarrant county, by Geo. C. Ward, deputy. Filed in court of civil appeals, at Fort Worth, Texas, the 16th day of July, 1898. W. L. Huff, clerk court of civil appeals, second supreme judicial district of Texas.

Opinion of Court of Civil Appeals.

ST. LOUIS — SOUTHWESTERN RAILWAY CO. OF TEXAS, Appellant,
vs.
W. P. SMITH, Appellee.
No. 3106.

From the district court of Tarrant county.

Opinion.

Appellee brought this suit to recover the value of certain cattle shipped from Plain Dealing, Louisiana, upon a through bill of lading to Fort Worth, Texas, alleging that appellant accepted the shipment under said bill from a connecting carrier at Texarkana, Texas, and carried the cattle to Fort Worth, where the freight was tendered to it, and delivery refused.

Appellant answered by general denial, and that at the time and long before said shipment it was a violation of the quarantine laws and police regulations of the State of Texas to bring Louisiana cattle, such as these were, into Texas at that time, and plead the orders of the Live Stock Sanitary Commission and the proclamation of the governor putting same in force relative to Louisiana cattle; that appellant had no actual knowledge of said orders and proclamation, and only the same constructive notice as the
28 general public had by the publication thereof in the daily papers, but that appellee not only had constructive notice, but actual notice, of such orders and regulations before the shipment; that appellant received the shipment at Texarkana, Texas, and carried them to Fort Worth, and, upon being there advised of the quarantine regulations, immediately asked, by telegraph, *authority* from the Live Stock Sanitary Commission for authority to deliver said cattle to consignee, which was refused; that the cattle were returned to its connecting line at Texarkana, and by it carried to Plain Dealing, Louisiana, and there tendered to the consignor, who was still at that place, and who was one of the joint owners of the cattle, and who had gone from Fort Worth to Plain Dealing with a drove of Texas ponies to trade for cattle, and represented himself and the others interested in said shipment; that appellee and his co-owners contributed to and brought about the damages they sustained, if any, by having said shipment made with knowledge and in violation of the said quarantine regulations; that by the terms of the contract the damages for which appellant should be liable were such only as occurred on its own line, and that none occurred while the shipment was in its possession; that by the terms of the contract it was agreed that in case of total loss the value of the cattle at the time and place of shipment should be the measure of damages.

Appellee, by supplemental petition, alleged that the said quarantine regulations were in violation of section 8, article 1, of the Con-

stitution of the United States, and the shipment was a continuous and interstate shipment; that the order of the Live Stock Sanitary Commission and the proclamation of the governor fail to show that the cattle were affected with the disease quarantined against, and affirmatively alleged them to be sound and well and incapable of communicating disease to other cattle.

The court held (1) that the said quarantine regulations are
29 violative of section 8, article 1, of the United States Constitution, and therefore void and no protection to appellant; (2) that the stipulation in the contract limiting damages in case of total loss to the value of the cattle at the time and place of shipment is void; and (3) that appellee was entitled to recover their value at the place of destination, for which he gave judgment, and from which judgment this appeal is prosecuted.

There is no separate statement of facts. The findings by the court and Exhibit A called for therein are as follows:

"1. I find that the shipment of cattle in controversy was upon a through bill of lading issued by the St. Louis — Southwestern Railway Co., and that Plain Dealing, Louisiana, was the initial point of shipment, and Fort Worth, Tarrant county, Texas, the point of destination.

"2. The defendant, The St. Louis — Southwestern Railway Co. of Texas, connected with the former-named railroad at Texarkana, Texas, and the cattle were delivered to defendant at Texarkana by the connecting line, and the same was a through and continuous shipment from said Plain Dealing, Louisiana, to place of destination.

"3. The bill of lading was executed on the 27th day of August, 1897, and the cattle reached Fort Worth on the evening of the 28th of said month, and upon their arrival the owners were ready to receive the same, and the said owners at Fort Worth, Texas, tendered the amount of freight, to wit, $50, to the defendant railroad company and demanded the cattle, and the said tender of freight charges and demand for the delivery of the cattle at Fort Worth, Texas, was refused by defendant.

"4. The cattle remained in the pens of defendant until August
31, 1897, and the stock yards at Fort Worth refused to receive said cattle in their pens on account of the proclamation of the
30 governor of Texas quarantining Louisiana cattle, and defendant also made application to the Live Stock Sanitary Commission of Texas for permission to deliver said cattle to the owners thereof, and on account of the governor's proclamation against Louisiana cattle the same was refused, and thereafter said defendant shipped said cattle back to Texarkana, Texas, and there delivered them to the line of railway from which defendant received them, which line returned said cattle to Plain Dealing, Louisiana, and there tendered said cattle to the shippers, who refused to receive them, and said line, after properly advertising them at the place from which they were received, sold said cattle and tendered $299.20, the proceeds thereof, less pasturage at Plain Dealing, Louisiana, to the owners of said cattle, which also was refused.

"5. At the time said cattle were received at Plain Dealing, Louisiana, and at the time of their arrival at Fort Worth, and the tender of the freight charges made to defendant by the owners of the cattle, the Live Stock Sanitary Commission had recommended the adoption of the following regulations with reference to Louisiana cattle:

"'The Texas Live Stock Commission has reason to believe that charbon or anthrax has or is liable to break out in the State of Louisiana, and from this time forth until the 15th day of November, 1897, no cattle, mules, or horses are to be transported or driven into the State of Texas from the State of Louisiana.'

"And C. A. Culberson, governor of Texas, on the 5th day of June, 1897, in conformity with law, regularly promulgated said order and regulations of said commission by proclamation (a full copy of which is hereto attached and made a part hereof), and the quarantine thereby established against cattle in Louisiana was in full force at the time of the shipment in question, if the same was a valid quarantine regulation.

"6. The bill of lading under which said cattle were shipped contained the following stipulations:

"'That in case of a total loss of any of the live stock
31 covered by this contract, for any cause for which the first party will be liable, payment thereof will be made on the basis of the actual cash value at the time and place of shipment, but in no case to exceed $100.00 for each horse, pony, gelding, mare, stallion, mule, or jack, $50.00 for each ox, $30 for each cow, $10.00 for each calf or hog, $3.00 for each sheep or goat, and in case of injury or partial loss the amount of damages claimed was not to exceed the same proportion.'

"The contract for the shipment of said cattle was in writing and signed by the carrier, and also by R. F. Miller, shipper, who acted for himself and as agent for the other owners of the cattle shipped, and, among other things, said contract contains the following agreement:

"'That for the consideration and for the covenants and conditions therein contained, the said first party (meaning the initial carrier) will transport for the said second party, the live stock described below, and the parties in charge thereof as hereinafter provided, viz: one car said to contain 46 head of stock cattle from Plain Dealing, Louisiana, station, to Fort Worth station, consigned to W. P. Smith, at the rate of $50.00 per car from Plain Dealing, Louisiana, to Fort Worth, Texas, subject to the minimum weights and length of car specified and provided for in tariff; said rate being less than the rate charged for shipments transported at carrier's risk. For which reduced rate and other considerations, it is mutually agreed between the parties hereto as follows:

"'First. It is mutually agreed that if the destination of such cars be beyond the line of the initial carrier, then said initial carrier agrees, and it, and each connecting carrier in turn is hereby authorized to deliver said cars to its connecting carrier for transportation under the terms, stipulations, limitations, and agreements herein

contained, and each and every carrier receiving said cars for transportation shall be deemed to adopt the terms and conditions
32 hereof, and assume the like liabilities, and shall be entitled to all the provisions, exemptions from, and limitations of liability, and other stipulations, covering the measure and adjustment of damages herein contained.'

"I further find that said cattle were traded for in exchange for horses and mules, no money being paid for them, and were shipped after the promulgation establishing the quarantine regulations above mentioned.

"7. All the interest of the shippers and owners of said cattle and proceeds thereof, and all the claims arising out of the transactions involved in this suit, had been transferred before suit by the respective owners of said cattle, to wit, S. P. Clark, W. A. Maddox, H. P. Miller, J. S. Collier, and J. A. J. Reeves, to the plaintiff herein, and he is now the owner of all the claims arising therefrom, and said cattle were Louisiana cattle, traded for in and around Plain Dealing, Louisiana, and at the time they were received by defendant at Texarkana defendant had no actual notice of the orders of the Live Stock Sanitary Commission and the governor's proclamation, but the owners of said cattle did have actual knowledge of the promulgation of the above-mentioned proclamation by the governor.

"8. It is agreed in this cause, by written agreement on file, that there were 46 head of cattle comprehended in this shipment, of age and character as follows: Eighteen cows, six of which had calves following them; seven one-year-old steers; three heifers two years old each; six two-year-old steers; one heifer one year old; one bull two years old; one bull three years old, and one four years old, and two three-years-old steers. And I further find that the actual fair market value of said cattle at the time of their arrival at Fort Worth and the refusal of the tender of the freight charges, in the Fort Worth market, was the sum of $610. And I further find that the amount of freight due defendant is the sum of $50.

33 "9. The actual cash fair market value of said cattle at the time and place of shipment, to wit, Plain Dealing, Louisiana, was the sum of $299.20.

"10. Defendant railway company and its connecting line at Texarkana are common carriers for hire."

The proclamation of the governor, Exhibit A referred to, is as follows:

"Whereas, the Live Stock Sanitary Commission of Texas has this day recommended the adoption of the following regulations:

"'The Live Stock Sanitary Commission of the State of Texas have been reliably informed that the cattle, mules and horses in the southern portion of Jefferson county, State of Texas, are affected with disease, known as charbon or anthrax, and are liable to impart such disease to cattle, mules and horses ranging in upper portion of Jefferson and other counties, from this time forth to the 15th day of November, 1897, no cattle, mules or horses are to be transported or

driven north or west of Taylor and Salt bayous, said bayous running across the southern portion of Jefferson county, State of Texas. This order is given for the purpose of quarantining all cattle, mules and horses south and east of said Taylor and Salt bayous. The Texas Live Stock Commission has reason to believe that charbon or anthrax has or is liable to break out in the State of Louisiana, from this time forth until the 15th day of November, 1897, no cattle, mules or horses are to be transported or driven into the State of Texas from the State of Louisiana. The Life Stock Sanitary Commission of the State of Texas hereby order that any violation of any of the aforesaid rules and regulations by moving of any cattle, mules or horses north of said bayous, or out of Louisiana into the State of Texas, is contrary to said rules and regulations, and shall be an offense and punishable as provided by the laws of the State of Texas.'

"Now, therefore, I, C. A. Culberson, governor of Texas,
34 in conformity with the provisions of chapter 7, title 102, of the Revised Statutes of Texas of 1895, do hereby declare that the quarantine lines, rules and regulations set forth in the above-recited order of the Live Stock Sanitary Commission of Texas, shall be in full force and effect from and after this date.

"In witness whereof, I have hereunto set my hand, and caused the seal of the State to be affixed, at Austin, this 5th day of June, A. D. 1897.

"C. A. CULBERSON,
"*Governor of Texas.*"

The trial court found the following conclusions of law:

"1. The quarantine regulations above mentioned, established by the governor of the State, is a regulation of or an interference with interstate commerce, in that its effect is to prohibit the importation of all cattle from the State of Louisiana into the State of Texas, whether affected with or capable of communicating the disease mentioned in said proclamation or not, and is therefore void as being in contravention of section 8 of article 1 of the Constitution of the United States.

"Had the Live Stock Sanitary Commission of the State found upon investigation that charbon or anthrax had broken out among the entire cattle of the State of Louisiana, and that all cattle of the State of Louisiana were liable to communicate either of said diseases to cattle of the State of Texas, and had said proclamation of the governor been based upon said finding, then I think it would have been in law a police regulation of no greater scope than necessary to the protection of cattle in the State of Texas, and therefore valid, even though it did interfere with interstate commerce.

"2. The stipulation in the contract of shipment limiting the damages in case of total loss of cattle to the actual cash value thereof
35 at the time and place of shipment to a fixed sum per head is contrary to law, and therefore void, the correct measure of damages in such cases being the reasonable market value of the cattle so lost at the point of destination.

"3. The plaintiff is entitled to recover of the defendant the sum of $610, the value of the cattle lost by him at the time and place of destination, less the sum of $50, freight charges due defendant for said shipment, leaving a balance of $560, together with the interest thereon from August 28, 1897, up to the present time, at the rate of six per cent. per annum, making a total of $578.10, and judgment is rendered accordingly."

Appellant's first assignment of error is as follows: "The court erred in his first conclusion of law in holding that 'the quarantine regulations above mentioned, established by the proclamation of the governor of the State, is a regulation of or an interference with interstate commerce, in that its effect is to prohibit the importation of all cattle from the State of Louisiana into the State of Texas, whether affected with or capable of communicating the disease mentioned in said proclamation or not, and is therefore void as being in contravention of section 8, article 1, of the Constitution of the United States.'"

It will be thus seen that we have before us an important question for solution. It involves the powers of the governor and of the Live Stock Sanitary Commission of Texas, in so far as such powers relate to the protection or attempted protection of the live stock interests of this State, and also the question as to whether the regulation of said commission and the proclamation of the governor in question were violative of section 8, article 1, of the Constitution of the United States. Under this assignment we will consider the questions in the order indicated.

In so far as necessary to be considered, our statutory provisions on the subject are as follows:

Revised Statutes, art. 5043*a*, provides that "there shall be
36 appointed by the governor, and with the consent of the senate, a live stock sanitary commission of the State of Texas, composed of three members." It is then provided that such commissioners shall take the usual oath of office, execute bond, and that the term of office shall be for a "period of two years," etc.

Article 5043*c* provides: "It shall be the duty of the commission provided for in article 5043*a* to protect the domestic animals of this State from all contagious or infectious diseases of a maligant character, whether said diseases exist in Texas or elsewhere; and for this purpose they are hereby authorized and empowered to establish, maintain, and enforce such quarantine lines and sanitary rules and regulations as they may deem necessary. It shall also be the duty of said commission to co-operate with live-stock quarantine commissioners and officers of other States and Territories, and with the United States Secretary of Agriculture, in establishing such interstate quarantine lines, rules, and regulations as shall best protect the live-stock industry of this State against Texas or splenetic fever. It shall be the duty of said commission, upon receipt by them of reliable information of the existence among the domestic animals of the State of any malignant disease, to go at once to the place where any such disease is alleged to exist, and make a careful examination of the animals believed to be affected with any such dis-

ease, and ascertain, if possible, what, if any, disease exists among the live stock reported to be affected, and whether the same is contagious or infectious, and if said disease is found to be of a malignant, contagious or infectious character, they shall direct and enforce such quarantine lines and sanitary regulations as are necessary to prevent the spread of any such disease. And no domestic animals infected with disease, or capable of communicating the same, shall be permitted to enter or leave the district, premises, or grounds so quarantined, except by authority of the commissioners. The said commission shall also, from time to time, give and enforce
37 such directions and prescribe such rules and regulations as to separating, feeding, and caring for such diseased and exposed animals as they shall deem necessary to prevent the animals so affected with such disease from coming in contact with other animals not so affected. And the said commissioners are hereby authorized and empowered to enter upon any grounds or premises to carry out the provisions of this act."

In this connection it is important to observe that the first paragraph of this article makes it the duty of the commission to protect the domestic animals of this State from all contagious or infectious diseases of a malignant character, whether said diseases exist in Texas or elsewhere, and for that purpose it is empowered to establish and maintain such quarantine lines, rules, and regulations as it may deem necessary.

It is important also that it be observed that the duty and power thus imposed is general in its scope, and that the time when and manner in which this duty and power is to be exercised are not defined in the statute nor any rules or regulations prescribed. The commissioners may establish such lines and such rules and regulations as they "may deem necessary." So that in all respects the duty and the power is general, and the time and manner of its performance is left with the commissioners.

It is to be noted also that the duty and power above noted is to be distinguished from that indicated in the succeeding paragraphs of the statute. The second paragraph declares it to be the duty of the commissioners to co-operate with like commissioners of other States or Territories and of the United States in establishing such quarantine lines, rules, and regulations as shall best protect the live-stock industry of this State against Texas or splenetic fever. The next or third paragraph declares it to be the duty of said commission, upon receipt of reliable information of the existence among the domestic animals of this State of disease, to go and in-
38 vestigate, and if disease be found, to establish quarantine lines, etc., so as to prevent the spread of it.

Article 5043*i*, Revised Statutes, is as follows: "The Live Stock Sanitary Commission shall have power to call upon any sheriff, deputy sheriff or constable to execute their orders, and such officers shall obey the orders of said commissioners; and the officer or officers performing these duties shall each be entitled to two dollars and fifty cents per day for himself and horse, which payment shall be made upon a sworn account, approved by said commissioners;

provided, said expenses under this article shall not exceed in any event five hundred dollars per annum."

Article 5043*k* is as follows: "Any quarantine line that may be fixed by the Live Stock Sanitary Commission, against Texas or splenetic fever, shall be so fixed as to conform to the Federal quarantine line established, or that may be established, by the United States Department of Agriculture; provided, however, that as to the shipment or movement of live stock within the limits of the State, such quarantine lines, and the regulations in relation thereto, shall not apply from the first day of November to the fifteenth day of May of each year; provided, the quarantine line now recognized and established by Federal authority within the State of Texas shall not be changed prior to December 1, 1893, but said line as is now established shall remain in full force until said date."

Then our law provides appropriate penal provisions for violations of quarantine laws.

It is universally conceded that the power to pass proper quarantine laws is among the powers reserved to the several sovereign States of this Union. As was said by Chief Justice Marshall, in speaking of inspection laws, in the case of Gibbons *v.* Ogden, 9 Wheat., 203: "They form a portion of that immense mass of legislation which embraces everything within the territory of a State not surrendered to the General Government; all which can
39 be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State, and those which respect turnpike roads, ferries, &c., are component parts of this mass." As was said in that case, "that such laws (inspection laws in that case) may have a remote and considerable influence on commerce will not be denied, but that the power to regulate commerce is the source from which the right to pass them is derived cannot be admitted." Again, as was said by the court in Thorpe *v.* Railroad, 27 Vt., 149, "it extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the State. According to the maxim *Sic utere tuo ut alienum non laedas*, which being of universal application, it must, of course, be within the range of legislative action to define the mode and manner in which every one may so use his own as not to injure others."

This power has been exercised and upheld in a great variety of cases, and is so well established that we think it will be unquestioned, and extended discussion is therefore unnecessary. Crowley *v.* Christensen, 137 U. S., 86; Lawton *v.* Steele, 152 U. S., 136; Slaughter-house cases, 16 Wall., 36; Patterson *v.* Kentucky, 7 Otto, 501; Morgan *v.* Louisiana, 118 U. S., 455; Railway *v.* Haber, 169 U. S., 613.

The difficulty in the present case arises in the application of the general rule, for it must be conceded that "while a State may enact sanitary laws, while for the purpose of self-protection it may establish quarantine and reasonable inspection regulations, while it may prevent persons and animals suffering under contagious or infectious

diseases from entering the State, it cannot interfere with transportation into or through its borders beyond what is absolutely necessary for its self-protection." Hannibal & St. Joseph Railroad Co. *v.* Husen, 95 U. S., 465; Brunner *v.* Rehman, 138 U. S., 78; Scott *v.* Donald, 165 U. S., 178, 180.

40 The question is not free from difficulty. It is often a matter of great perplexity to undertake to trace the sometimes shadowy line between the lawful exercise of the police power of the State and the conceded power of Congress "to regulate commerce with foreign nations and among the several States and with the Indian tribes." However, when a statute or police regulation, such as a quarantine line and regulations duly promulgated by the legally constituted authority, is attacked on the ground of its unconstitutionality, we think the burden is entirely upon the party insisting on its invalidity to clearly point out its vice. Courts have uniformly refused to declare a law or lawful regulation of the legislative body unconstitutional except when impelled thereto by the clearest reason.

The real question arising under this assignment of error is, Has it been shown clearly that the quarantine regulations in question are violative of the section of the Constitution cited? Has it been clearly shown that such regulations were in fact an unnecessary invasion of the power of Congress to regulate commerce between the States?

We have seen that quarantine laws and inspection laws often more or less directly affect interstate commerce; but that fact alone will not justify the inference that the quarantine regulations in question were an unwarranted exercise of the inherent police power of Texas to protect the property of her citizens. Holden *v.* Hardy, 169 U. S., 365, and authorities cited.

The mode in which these regulations were put in force, if at all, is not attacked—that is, it is not questioned that a State may lawfully empower her governor to appoint a commission to whom shall be committed the power of determining the necessity for quarantine regulations and of prescribing the rules necessary to make them effective. In this case it is unquestioned that such a com-

41 mission was appointed, that they declared the quarantine in question, and that it was duly promulgated by proclamation of the governor. These regulations are only questioned because of their alleged infringement of the Constitution.

We think reflection will convince the reasonable mind that a large discretion must necessarily be given a commission of this kind in determining the state of facts rendering a quarantine necessary in the protection of life or property in the State and the time when such quarantine should be declared. No legislative act could provide for every contingency rendering necessary the exercise of the power to exclude persons or things whose introduction might prove destructive to the life or property of our citizens, and we have seen that our law has in fact vested in the sanitary commission appointed thereunder a very wide discretion, and we maintain that when that discretion has been called into exercise and formal quar-

antine lines designated and the rules and regulations declared that are to make it effective, such line and such regulations have all the force of law, and as such should be obeyed by every class of our citizenship, unless it plainly appear that the commissioners have exceeded their powers.

The facts in this case are not disputed. The plaintiff sues as for a conversion, because of a refusal to deliver his cattle at Fort Worth. It is necessary to his recovery that he show that it was the legal duty of the defendant company to make such delivery. It is for the breach of this alleged duty he sues; yet it nowhere appears from the record that before the quarantine line in question was established the sanitary commission did not make the most careful and thorough investigation into the necessity therefor, if, indeed, that matter could in any event be inquired into. So far as the record shows, every animal of the kind prohibited in the State of Louisiana may have been actually affected with charbon or anthrax, and it is conceded that this is a disease different from Texas
42 or splenetic fever, and that it is contagious and infectious and of the most virulent character.

It was shown that appellee's vendors had actual notice of the quarantine, and that appellant had not. It was also shown that after such notice was brought home to appellant it sought permission of the sanitary commission to deliver the cattle. The sanitary commission ruled and ordered otherwise. It has been given power to make rules. It has the power to call upon the sheriff and peace officers to enforce them. It was the duty of such officers to obey the orders of such commission. Our law also provides heavy penalties for a violation of the rules and regulations of the sanitary commission.

In this attitude of the case appellee insists that it was the legal duty of appellant to deliver the cattle in question, and yet he did not even show that the very cattle for the value of which he sues were free from the disease mentioned. So far as the record before us shows, they may every one have been so affected. We are asked to presume to the contrary, and to presume that the action of the commission was not necessary as a precautionary measure; that their judgment and discretion had been wrongfully exercised. We think every presumption should be indulged in aid of the validity of the law.

It may be said that it is not a reasonable presumption that all Louisiana cattle were at the time affected with charbon or anthrax. This may be true. Yet we do not understand that such condition must exist in order to — the validity of a restraining order in the form of a quarantine. If the disease is contagious and infectious, large proportions thereof may have been subject to the influences of the disease, and thereby liable to communicate it to cattle in Texas. From the record we do not know what was the condition in this respect at the time our sanitary commission declared "that charbon and anthrax had or was liable to break out in the State of Louisiana." The necessities of such cases often require prompt action.

If too long delayed, the end to be attained by the exercise of
43 the power to declare a quarantine may be defeated and irreparable injury done.

It is a matter of common history that our State and other States almost annually quarantine against cities and even States in which may be raging some contagious and deadly disease. The result is often to absolutely restrict immigration for the time being from such infected districts. It may happen as a fact that a person seeking admission is not affected with the disease quarantined against and has not been subject to contagion therefrom, yet if he be from the State, city, or district against which there be the quarantine prohibition he cannot enter our State.

The Supreme Court of the United States have declared certain acts of States restrictive of immigration unconstitutional, but we have been unable to find where a quarantine regulation of the kind mentioned has been held to be an unwarranted exercise of power on the part of a State. If it should so happen, for instance, that the yellow fever was epidemic in the island of Cuba, it would not only be within the power, but also the duty of our quarantine officers to quarantine against every man, woman, or child in that island, in all cases, of course, under proper regulations. The object of all such laws is not to unnecessarily restrict immigration nor to regulate commerce between the States. It is true for the time being such laws may absolutely prevent immigration or the introduction of property from the prohibited district, yet the exercise of such a power is absolutely necessary to the protection of life and property. It is a necessary incident of the law of self-defense. They are and are intended to be but temporary in character. The law in question was in no sense a regulation of commerce. It originated in a desire to protect the stock interests of Texas. It but provided for a suspension of the introduction of cattle, etc., for a very limited time.

44 Without further argument or citation of authority, our conclusion is that this case should be reversed and rendered for appellant, and it is so ordered.

CONNER, *Chief Justice.*

Filed in court of civil appeals Feb. 18, 1899.

W. L. HUFF, *Clerk.*

Judgment of Court of Civil Appeals.

St. Louis — Southwestern Railway Company *vs.* W. P. Smith.	3106. From Dist. Court, Tarrant County. February 18, 1899. Opinion by Mr. Conner, Ch. J.

This cause came on to be heard on a transcript of the record, and the same being inspected, because it is the opinion of this court that there was error in the judgment, it is therefore considered, and so ordered, adjudged, and decreed, that the judgment of the court

below be reversed, and this court proceeded to render such judgment as should have been rendered by the court below. It is the order of this court that the appellee, W. P. Smith, take nothing by this suit, and that the appellant, The Saint Louis — Southwestern Railway Co., go hence without day, and that it have and recover of and from said appellee its costs. It is further ordered that said W. P. Smith pay all costs in this behalf expended, and that this decision be certified below for observance.

45 *Motion for Rehearing.*

In the Court of Civil Appeals, Second Supreme Judicial District of Texas, at Ft. Worth.

ST. LOUIS — SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Appellant,
vs.
W. P. SMITH, Appellee.
} No. 3106.

To the honorable judges of said court:

Now, at this term, comes W. P. Smith, appellee, and moves the court for a rehearing in the above styled and entitled cause, and shows that Perkins, Gilbert and Perkins are the attorneys of record for the appellant in said cause, and that J. E. Gilbert, a member of said firm, is a resident citizen of Dallas county, Texas, and for grounds for a rehearing herein appellee says:

First. The honorable court of civil appeals erred in sustaining appellant's first assignment of error and in holding that the alleged recommendation adopted by the Live Stock Sanitary Commission of the State of Texas, prohibiting the importation of all cattle, mules, and horses from the State of Louisiana into the State of Texas from the 5th day of June, 1897, until the 15th day of November of said year, and the proclamation of the governor of Texas putting said recommendation in force, as set forth in said proclamation, as appears from a copy of the same and identified as "Exhibit A" in the record and set out in the court's opinion herein, was not a burden upon and an undue interference with commerce between the said State of Louisiana and the State of Texas and an invasion of the powers of Congress to regulate commerce between the said two States.

Second. The court erred in impliedly holding that the recommendation of the said Live Stock Sanitary Commission above mentioned was a quarantine measure within the police power of
46 the State of Texas to adopt and enforce.

Third. The court erred in holding inferentially that it was incumbent upon appellee to prove on the trial of this cause that the said cattle, the value of which was sued for by him herein, were free from disease at the time of the shipment.

Fourth. The court erred in holding that said alleged quarantine regulation was authorized by the laws of the State of Texas.

Fifth. The court erred in not taking into consideration and in

not finding that Congress, by the act of May 29, 1884 (23 Stat. at L., 31, chap. 60), known as "the animal-industry act," together with the acts of March 3, 1891 (26 Stat. at L., 1044, 1049, chap. 544), and that of August 8, 1894, session 2, chap. 238; also that of April 14th, 1896 (chap. 140, p. 108), appropriating money to carry out the provisions of that act, covered substantially the whole subject of transportation from one State to another State — live stock liable to impart or capable of communicating infectious or contagious diseases, and in not holding that the State of Texas had no authority without co-operating with the Secretary of Agriculture of the United States before attempting to adopt quarantine lines between the State of Louisiana and the State of Texas, for appellee says that by the act mentioned Congress had provided for a general system of quarantine and had adopted means for the regulation of shipments of cattle liable to impart or capable of communicating infectious or contagious diseases from one State to another.

Sixth. The court erred in the following conclusion: "Yet it nowhere appears from the record that before the quarantine line in question was established the sanitary commission did not make the most careful and thorough investigation into the necessity therefor, if, indeed, that matter could in any event be inquired into. So far as the record shows, every animal of the kind prohibited in
47 the State of Louisiana may have been actually affected with charbon or anthrax, and it is conceded that this is a disease different from Texas or splenetic fever, and that it is contagious and infectious and of the most virulent character."

Said conclusion was not justified by the evidence in this cause for the reason that said recommendation of said sanitary commission shows upon its face that no investigation had been made, or, if any, only a partial one, for said commission does not find as a fact that the said disease of anthrax or charbon did actually exist in the State of Louisiana, but made said broad and sweeping prohibition under the guise of a quarantine regulation from a mere rumor that said disease "has or is liable to break out in the State of Louisiana."

Seventh. The court erred in its conclusion that inasmuch as said recommendation for the prohibition of the importation of cattle from Louisiana into the State of Texas was merely temporary in its character, that the same for that reason constituted it a quarantine measure.

Eighth. The court erred in its conclusion that it was the duty of appellee in the trial of this cause to show that said cattle, the value of which was sued for by him, were free from disease, and therefore not subject to the regulations complained of.

(*a.*) There was no contention that said cattle were diseased, nor any allegations to that effect in said appellant's answer in this cause.

(*b.*) Appellant, defendant in the court below, did not attempt to justify the conversion of said cattle, but relied for a defense wholly upon the broad powers under which said Live Stock Sanitary Commission of Texas assumed to act in laying an embargo upon the transportation of cattle from the State of Louisiana into the State of

Texas during the period named in the proclamation of C. A. Culberson, governor.

Ninth. The court — in reversing and rendering said judg-
48 ment of the trial court, and further erred in not rendering judgment for appellee for the sum of two hundred and ninety-nine ($299.20) dollars and twenty cents, with interest thereon, at the legal rate of six per cent., from the first day of January, 1898, said amount being the admitted proceeds in the hands of appellant arising from the sale of said cattle in Louisiana, as found by the trial court in its fourth conclusion of fact (Tr., p. 19).

Wherefore appellee prays that the judgment of this court, rendered herein February 18, 1899, be set aside and the judgment of the trial court be in all things affirmed, or that the judgment of said trial court be reversed and rendered for said sum of two hundred and ninety-nine ($299.20) dollars and twenty cents, and that the costs in the trial court be taxed against appellant, and the costs of this court be taxed against appellee.

Respectfully submitted.

HENDRICKS AND HENDRICKS,
Attorneys for Appellee, W. P. Smith.

Filed in court of civil appeals March 2, 1899.

W. L. HUFF, *Clerk.*

Order on Motion for Rehearing.

ST. L. — S. W. R'Y CO. *vs.* W. P. SMITH. } 2796, 3106.

MARCH 25, 1899.

This day came on to be heard the motion of appellee for a rehearing in this cause, which, having been heard and considered by the court, is overruled, and the suggestion to reform the judgment in favor of the appellant for the amount tendered shippers at Plain Dealing, La., as found by the court below, is denied on the ground that there is no basis therefor in the pleadings.

49 *Order of Supreme Court on Application for Writ of Error.*

In Supreme Court of Texas, Second District.

W. P. SMITH *vs.* ST. LOUIS — S. W. R'Y CO. OF TEXAS.

MAY 25, 1899.

This day came on to be heard the application of W. P. Smith for a writ of error to the court of civil appeals for the second supreme judicial district, and, the same having been duly considered, it is ordered that said application be refused; that the applicant, W. P. Smith, pay all costs on this application.

I, Charles S. Morse, clerk of the supreme court of Texas, hereby certify that the above is a true and correct copy of the judgment rendered by said court in the above styled and numbered application.

Witness my hand and the seal of said court this the 25th day of May, 1899.

[L. S.] CHAS. S. MORSE, *Clerk*,
By F. T. CONNERLY, *Deputy*.

Bill of Costs in Supreme Court.

Clerk's Office, Supreme Court.

W. P. SMITH *vs.* ST. L.—S. W. R'Y CO. OF TEX. } No. 2248. Certified Copy Bill of Costs, Supreme Court.

Filing application		.50
Docketing petition		.50
Entering appearances of counsel		.50
Filing 2 briefs		.60
Filing 3 papers		.90
Entering orders		.50
	Entering judgment on application	1.00
50	Certified copy of judgment	1.00
	Taxing costs of application	.50
Certified copy bill of costs		1.00
	Total	7.00

I, Charles S. Morse, clerk of the supreme court of Texas, hereby certify that the above copy of the original bill of costs is true and correct.

Witness my hand and the seal of said court, at Austin, this the 25th day of May, 1899.

[L. S.] CHAS. S. MORSE, *Clerk*.

Application for Allowance of Writ of Error.

The Court of Civil Appeals of the Second Supreme Judicial District of Texas.

W. P. SMITH, Plaintiff in Error,
vs.
ST. LOUIS & SOUTHWESTERN RAILWAY COMPANY OF TEXAS.

Petition for writ of error.

To the Honorable T. H. Conner, chief justice of the court of civil appeals of the second supreme judicial district of Texas, at Fort Worth:

And now comes W. P. Smith, hereinafter styled plaintiff in error, and, complaining of The St. Louis & Southwestern Railway Com-

pany of Texas, hereinafter designated as defendant in error, with respect shows that plaintiff is a resident citizen of Tarrant county, Texas, and that said defendant is a private corporation, duly incorporated, and is a common carrier for hire; that its attor-
51 neys of record herein are Perkins, Gilbert & Perkins, of Dallas county, Texas.

Plaintiff presents this his application for writ of error from the Supreme Court of the United States to this honorable court, and to show that said Supreme Court has jurisdiction to entertain an appeal herein by writ of error and to determine and consider the several matters complained of in the assignment of errors filed herewith, and to further show that the honorable Chief Justice of this court has power and authority to grant this application, plaintiff respectfully represents that this suit was filed in the district court of Tarrant county, Texas, by plaintiff in error against defendant in error on the 19th day of March, A. D. 1898, and was tried before that court without a jury on the 14th day of April, A. D. 1898, on which said trial plaintiff in error prevailed; whereupon defendant in error took an appeal, upon conclusions of fact and law as found by said trial court, to the court of civil appeals of the second supreme judicial district of Fort Worth, Texas, and the same was, after due hearing and submission, decided by said court on the 18th day of February, 1899, and so resulted that the judgment of said court was reversed and judgment rendered for defendant in error. Plaintiff in error filed his motion for a rehearing March 3, 1899, assigning errors therein as hereinafter in substance shown and by the record made manifest, and said motion was on the 25th day of March, 1899, overruled; that thereafter and within the time prescribed by law plaintiff presented his application for a writ of error to the supreme court of the State of Texas, complaining of the errors set forth in said assignment of errors filed herewith, but that said application, on the 25th day of May, A. D. 1899, was refused, and said supreme court of Texas refused to take jurisdiction of this cause, as shown by copy of its judgment filed among the papers in this cause.

Plaintiff shows that the decision of the honorable court of civil appeals of Texas was adverse to him, and that said decision
52 was the denial of a right claimed by him under the Constitution and laws of the United States, as shown by the following:

Statement of the Nature and Result of this Case.

The suit was one as for conversion of certain cattle of the alleged value of seven hundred dollars. Said cattle had been shipped from Plain Dealing, Louisiana, by plaintiff and five others to Fort Worth, Texas, and were delivered to defendant in error on or about the 28th day of August, 1897, by its connecting carrier, at Texarkana, Texas, and by it brought to Fort Worth the following day. Upon arrival of the cattle at Fort Worth all charges were duly tendered by said owners, but defendant refused to deliver said cattle

and returned the same to its initial point of shipment in Louisiana; and after tendering same to said owners there and said tender being refused, they sold said cattle for $299.20 and retained the proceeds. Thereafter and before said suit said five associate owners sold and assigned their respective interests in said cattle and the cause of action to plaintiff herein.

Defendant's only defense for its refusal to deliver said cattle was in substance that at the time of said shipment there existed an order (of which it was in ignorance, but of which the said owners had notice) of the Live Stock Sanitary Commission of Texas, duly made and promulgated by the governor of the State, whereby all cattle, horses, and mules were prohibited from being transported from the State of Louisiana into the State of Texas, from the 5th day of June, A. D. 1897, until the 15th day of November of said year, said order being based on a finding by said commission that it "has reason to believe that charbon or anthrax has or is liable to break out in the State of Louisiana." To this defense plaintiff interposed a reply by supplement- petition that said order was too general in its character; that it did not constitute a quarantine regulation or inspection law, in that its effect was to prohibit the importation of all live stock from the entire State of Louisi-
53 ana, whether diseased or capable of communicating the same or not, and was an undue restriction and burden upon commerce between said States, and for that reason in conflict with the powers of the General Government, as provided in section 8 of article 1 of the Constitution of the United States, and void.

Plaintiff's said reply being sustained by said trial court, but now overruled by said court of civil appeals, and plaintiff being denied all relief whatever, he complains thereof and says that the said errors, as set forth in his assignment of errors filed herewith, were committed to the prejudice of this plaintiff.

Wherefore plaintiff in error pray- that a writ of error may be allowed in this behalf to the court of civil appeals of the second supreme judicial district of Texas for the correction of the errors so complained of, and that the record, proceedings, and papers of this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

WALLACE HENDRICKS,
Attorney for Plaintiff in Error, W. P. Smith.

ST. LOUIS & SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Appellant,
vs.
W. P. SMITH, Appellee.

This the 4th day of August came the appellee, by his attorney, and filed herein and presented to the chief justice of this court his petition, and praying for the allowance of writ of error intended to be urged by him, praying also that the transcript of the record, proceedings, and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the

United States, at the seat of Government, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the court does allow the writ
54 of error upon the appellee giving bond according to law in the sum of five hundred dollars, which may operate as a cost bond.

T. H. CONNER,
Chief Justice of the Court of Civil Appeals in and for the Second Supreme Judicial District of Texas.

I, W. L. Huff, clerk of the court of civil appeals of the second supreme judicial district, do hereby certify that T. H. Conner, whose name is subscribed to the foregoing order, was at the time of subscribing the same chief justice of the court of civil appeals of the second supreme judicial district of Texas, duly commissioned and qualified, and that full faith and credit are due to all his official acts as such.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Fort Worth, Texas, this the 24th day of August, A. D. 1899.

[L. S.] W. L. HUFF,
Clerk of the Court of Civil Appeals in and for the Second Supreme Judicial District of Texas, at Fort Worth, Tex.

Filed in court of civil appeals Aug. 24, 1899.
W. L. HUFF, *Clerk.*

Citation in Error.

The United States of America to the St. Louis & Southwestern Railway Company of Texas, J. F. Lehane, its agent, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden at the city of Washington, on the 9th day of October next, pursuant to a writ of error filed in the clerk's office of the court of civil appeals of the second supreme judicial district of Texas, wherein W. P. Smith is
55 plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and speedy justice be done to the parties in that behalf.

Given under my hand, at the city of Fort Worth, second supreme judicial district of Texas, this 6th day of Sept., in the year of our Lord one thousand eight hundred and ninety-nine.

T. H. CONNER,
Chief Justice of the Court of Civil Appeals in and for the Second Supreme Judicial District of Texas.

We hereby, this the 8th day of September, A. D. 1899, accept due personal service of this citation on behalf of The St. Louis and

Southwestern Railway Company of Texas, defendant in error, reserving all rights available if regularly served.

PERKINS, GILBERT & HALL,
Attorneys for Defendant in Error.

Filed in court of civil appeals Sept. 6, 1899.

W. L. HUFF, *Clerk.*

Assignments of Error.

The Court of Civil Appeals, Second Supreme Judicial District of Texas, at Fort Worth.

W. P. SMITH, Plaintiff in Error,
vs.
ST. LOUIS & SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Defendant in Error. } No. 3106.

Plaintiff in error, W. P. Smith, in connection with his petition for writ of error filed herewith, makes the following assign-
56 ment of errors, which he avers occurred in the judgment and determination of this cause by the honorable court of civil appeals:

First. The honorable court of civil appeals erred in sustaining appellant's first assignment of error and in holding that the alleged recommendation adopted by the Live Stock Sanitary Commission of the State of Texas, prohibiting the importation of all cattle, mules, and horses from the State of Louisiana into the State of Texas from the 5th day of June, 1897, until the 15th day of November of said year, and the proclamation of the governor of Texas, putting said recommendation in force, as set forth in said proclamation, as appears from a copy of the same and identified as "Exhibit A" in the record and set out in the court's opinion herein, was not a burden upon and an undue interference with commerce between the said State of Louisiana and the State of Texas and an invasion of the powers of Congress to regulate commerce between the said two States.

Second. The court erred in impliedly holding that the recommendation of the said Live Stock Sanitary Commission above mentioned was a quarantine measure within the police power of the State of Texas to adopt and enforce.

Third. The court erred in holding that said alleged quarantine regulation was authorized by the laws of the State of Texas.

Fourth. The court erred in not taking into consideration and in not finding that Congress, by the act of May 29th, 1884 (23 Stat. at L., 31, chap. 60), known as "The animal-industry act," together with the acts of March 3, 1891 (26 Stat. at L., 1044, 1049, chap. 544), and that of August 8, 1894 (session 2, chap. 238), also that of April 14, 1896 (chap. 140, p. 108), appropriating money to carry out the provisions of that act, covered substantially the whole subject of transportation from one State to another State — live stock liable to

impart or capable of communicating infectious or contagious
57 diseases, and in not holding that the State of Texas had no authority, without co-operating with the Secretary of Agriculture of the United States before attempting to adopt quarantine lines between the State of Louisiana and the State of Texas, for appellee says that by the act mentioned Congress had provided for a general system of quarantine and had adopted means for the regulation of shipments of cattle liable to impart or capable of communicating infectious or contagious diseases from one State to another.

Fifth. The court erred in the following conclusion: "Yet it nowhere appears from the record that before the quarantine line in question was established the sanitary commission did not make the most careful and thorough investigation into the necessity therefor, if, indeed, that matter could in any event be inquired into. So far as the record shows, every animal of the kind prohibited in the State of Louisiana may have been actually affected with charbon or anthrax, and it is conceded that this is a disease different from Texas or splenetic fever, and that it is contagious and infectious and of the most virulent character."

Said conclusion was not justified by the evidence in this cause for the reason that said recommendation of said sanitary commission shows upon its face that no investigation had been made, or, if any, only a partial one, for said commission does not find as a fact that the said disease of anthrax or charbon did actually exist in the State of Louisiana, but made said broad and sweeping prohibition under the guise of a quarantine regulation from a mere rumor that said disease "has or is liable to break out in the State of Louisiana."

Sixth. The court erred in its conclusion that inasmuch as said recommendation for the prohibition of the importation of cattle from Louisiana into the State of Texas was merely temporary in its character, that the same, for that reason, constituted it a quarantine measure.

58 Seventh. The court erred in its conclusion that it was the duty of appellee in the trial of this cause to show that said cattle, the value of which was sued for by him, were free from disease, and therefore not subject to the regulations complained of.

(*a.*) There was no contention that said cattle were diseased, nor any allegations to that effect *that* said appellant's answer in this cause.

(*b.*) Appellant, defendant in the court below, did not attempt to justify the conversation complained of by the reason of the diseased condition of said cattle, but relied for a defense wholly upon the broad powers under which said Live Stock Sanitary Commission of Texas assumed to act in laying an embargo upon the transportation of cattle from the State of Louisiana into the State of Texas during the period named in the proclamation of C. A. Culberson, governor.

WALLACE HENDRICKS,
Attorney for Plaintiff in Error, W. P. Smith.

Filed in court of civil appeals Aug. 28, 1899.

W. L. HUFF, *Clerk.*

Bond for Writ of Error.

The Supreme Court of the United States.

W. P. SMITH, Plaintiff in Error,
vs.
ST. LOUIS AND SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Defendant in Error.

Know all men by these presents that we, W. P. Smith, as principal, and S. P. Clark and J. S. Collier, as sureties, are held and firmly bound unto the defendant, The St. Louis and South-
59 western Railway Company of Texas, in the full and just sum of five hundred and no $_{100}$ dollars, to be paid to the said defendant, The St. Louis and Southwestern Railway Co. of Texas, its attorneys, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this the — day of October, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a term of the court of civil appeals of the second supreme judicial district of Texas, in a suit depending in said court between The St. Louis and Southwestern Railway Company of Texas, appellant, and W. P. Smith, appellee, a judgment was rendered against the said W. P. Smith, and the said W. P. Smith having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said St. Louis and Southwestern Railway Company of Texas, citing and admonishing it to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington, District of Columbia, on the 9th day of October, A. D. 1899:

Now, the condition of the above obligation is such that if the said W. P. Smith shall prosecute his writ of error to effect and answer all damages and costs if he fail to make the said plea good, then the above obligation to be void; else to remain in full force and effect.

W. P. SMITH,
By WALLACE HENDRICKS,
His Agent and Attorney.
JAS. S. COLLIER.
W. P. SMITH.
S. P. CLARK.

The foregoing bond presented to me this the 12th day of October, A. D. 1899, and approved the same day.

T. H. CONNER,
Chief Justice of the Court of Civil Appeals of the 2nd Supreme Judicial District of Texas.

60 W. P. SMITH, Plaintiff in Error,
vs.
ST. LOUIS AND SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Defendant in Error.

OCTOBER 12, 1899.

On this day came to be heard the application of W. P. Smith, plaintiff in error herein, to be allowed to substitute his writ of error bond heretofore filed and approved by me in this cause on the 6th day of September, A. D. 1899, and, it appearing that said bond has been lost or mislaid since the same was filed with clerk of the 2nd supreme judicial district of Texas, and cannot be found, it is ordered, therefore, that the bond this day approved by me, with J. S. Collier and S. P. Clark as sureties, be filed and allowed as a substitute for said original bond, as of the date of the original.

T. H. CONNER,
Chief Justice Court of Civil Appeals, 2nd Supreme Judicial District of Texas.

Filed in court of civil appeals Oct. 12, 1899.

W. L. HUFF, *Clerk.*

Bill of Costs.

ST. LOUIS — SOUTHWESTERN RAILway Company
vs.
W. P. SMITH, Appellee, } 3106. From Tarrant County.

Bill of costs.

Filing record	.50
Docketing cause	.50
Appearances	1.00
Filing and entering motion	.35
Orders	2.00
Filing papers	1.80
61 Judgment	1.00
Taxing costs	.50
Mandate, with certified copy of opinion attached	1.50
Recording opinion	8.00
Certified copy bill costs	.70
Certified copy of motion	2.00
Issuing notices	4.00
Issuing precept	1.50
Sheriff's fees	1.00
	26.35
Transcript of orders for application of writ of error to supreme court	1.00
Cost on application for writ of error in supreme court	7.00

Issuing execution	1.50
Transcript fee in lower court	14.00
Cost at Fort Worth	26.35
	$49.85
Transcript of record sent to Supreme Court of United States.	30.00
	$79.85

Clerk's Certificate.

I, W. L. Huff, clerk of the court of civil appeals for the second supreme judicial district of Texas, hereby certify that the foregoing is a true and correct transcript of all proceedings had in the trial court, in this court, and in the supreme court of Texas in the cause of W. P. Smith *v.* St. Louis Southwestern Railway Co. of Texas, as the same is contained in the records of this court.

Witness my signature and the seal of said court, at office, in the city of Fort Worth, this the 12th day of October, A. D. 1899.

Seal Court of Civil Appeals of the State of Texas.

W. L. HUFF, *Clerk.*

62 *Writ of Error to State Court.*

UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the court of civil appeals of the second supreme judicial district of the State of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the court of civil appeals, second supreme judicial district of the State of Texas, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between W. P. Smith, appellee and plaintiff in error, and The St. Louis & Southwestern Railway Company of Texas, appellant and defendant in error, (1) wherein was drawn in question the validity of a treaty (or statute) of (or an authority exercised under) the United States and the decision was against their validity, or (2) wherein was drawn in question the validity of a statute of (or an authority exercised under) said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or (3) wherein was drawn in question the construction of a clause of the Constitution of (or of a treaty or statute of or commission held under) the United States and the decision was against the right, title, privilege, or exemption specially set up or claimed under such clause of the said Constitution (treaty, statute, or commission), a manifest error hath happened, to the great damage of the said W. P. Smith, appellee and plaintiff in error, as by his complaint appears, we, being willing that error, if any hath

been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United
63 States, together with this writ, so that you may have the same at Washington on the 9th day of October next, same being the second Monday in October, A. D. 1899, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 4th day of Sept., 1889, and the seal of the United States circuit court for the northern district of Texas, this September 4th, 1899, at Fort Worth, Texas.

{ The Seal of the U. S. Circuit Court, Northern Dist. Texas, Ft. Worth. }

J. H. FINKS,
Clerk U. S. Cire't Ct, Northern Dist. of Texas, at Ft. Worth,
By THOMAS P. MARTIN, *Deputy.*

Allowed by—

____ ____,
Chief Justice of the Court of Civil Appeals of the Second Supreme Judicial District of the State of Texas.

64 THE UNITED STATES OF AMERICA:

Court of Civil Appeals of the Second Supreme Judicial District of Texas.

In pursuance of the command of the writ of error within, I, W. L. Huff, clerk of the court of civil appeals of the second supreme judicial district of Texas, herewith transmit a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in this case of The St. Louis & Southwestern Railway Company *vs.* W. P. Smith, lately pending in the court of civil appeals of the second supreme judicial district of Texas, under my hand and seal of said court.

Witness my official signature and the seal of said court of civil appeals, at the city of Fort Worth, in said district, this 12 day of Oct., in the year of our Lord one thousand eight hundred and 99, and of the Independence of the United States of America the one hundred and twenty-third.

[Seal Court of Civil Appeals of the State of Texas.]

W. L. HUFF,
Clerk of the Court of Civil Appeals of the Second Supreme Judicial District of Texas.

[Endorsed:] No. —. Writ of error. W. P. Smith, plaintiff in error, *vs.* St. Louis & Southwestern Railway Company of Texas, defendant in error. Filed in court of civil appeals Sep. 6, 1899. W. L. Huff, clerk 2nd supreme judicial district.

Endorsed on cover: File No., 17,563. Texas court of civil appeals, 2nd judicial district. Term No., 449. W. P. Smith, plaintiff in error, *vs.* The St. Louis & Southwestern Railway Company of Texas. Filed November 14th, 1899.

No. 449. 155

Brief of Albright

Office Supreme Court U.S.
FILED
MAY 18 1900
JAMES H. McKENNEY
Clerk.

Filed May 18, 1900.

IN THE

Supreme Court of the United States

No. 449.

W. P. SMITH, *Plaintiff in Error,*

vs.

ST. LOUIS & SOUTHWESTERN RAILWAY COMPANY OF TEXAS, *Defendant in Error.*

BRIEF FOR PLAINTIFF IN ERROR.

WALLACE HENDRICKS,
F. E. ALBRIGHT,
Attorneys for Plaintiff in Error.

KEYSTONE PRINTING CO., FT. WORTH

IN THE

Supreme Court of the United States

No. 449.

W. P. SMITH, *Plaintiff in Error,*

vs.

ST. LOUIS & SOUTHWESTERN RAILWAY COMPANY OF TEXAS, *Defendant in Error.*

BRIEF FOR PLAINTIFF IN ERROR.

In error to the Court of Civil Appeals of the Second Supreme Judicial District of Texas, at Fort Worth, Texas, to review a judgment of that Court, reversing and rendering a judgment of the District Court of Tarrant County, Texas, in favor of W. P. Smith, plaintiff, against the St. Louis & South Western Railway Company of Texas, defendant, for the value of a carload of cattle, shipped by plaintiff and five others from Plain Dealing, State of Louisiana, to Fort Worth, State of Texas. Defendant having refused to deliver the cattle upon their arrival at Fort Worth, on account of a general order in force at the date of shipment, recommended by the Live Stock Sanitary Commission of Texas, and promulgated by the Governor of the State, prohibiting the transportation of all cattle, mules or horses into the State of Texas from the State of Louisiana.

The opinion of the Court of Civil Appeals is reported in 49 S. W. Rep., p. 627.

STATEMENT OF THE CASE.

Plaintiff in error brought this suit in the District Court of Tarrant County, Texas, on the 30th day of September, A. D., 1897, against defendant in error, a Texas corporation and a common carrier for hire for the value of forty-six head of cattle.

Plaintiff alleged a delivery for shipment of said cattle to the St. Louis & Southwestern Railway Company, (another common car-

rier for hire) by one R. F. Miller, consignor in a bill of lading issued by said last named company, whereby it had agreed for a compensation of fifty dollars to transport said cattle from Plain Dealing, State of Louisiana, to plaintiff, as consignee at Fort Worth, Texas.

That under said through contract of shipment said last named company received the cattle at Plain Dealing, Louisiana, and transported the same to Texarkana, Texas, and there delivered the same to defendant, its connecting carrier, for shipment and delivery to plaintiff at Fort Worth, Texas. That defendant received said shipment under the bill of lading, so issued by the initial carrier, and brought the cattle to Fort Worth, Texas, and there unloaded the same in its pens.

That plaintiff and five others were the owners of said cattle, and that said owners, immediately upon the arrival of the cattle at Fort Worth, duly tendered the defendant the freight charges thereon, and demanded possession of said cattle; but that defendant refused to deliver said cattle, and had ever since refused to deliver the same to said owners or to plaintiff, whereby said cattle became wholly lost to said owners.

That subsequent to said refusal to deliver by defendant, and before the institution of the suit, said co-owners sold, transferred and assigned their interest in said cattle and in the cause of action sued upon, to plaintiff. (Rec. 1 to 3.)

To plaintiff's petition defendant answered by a general denial, and two special pleas; the first one, involving the principal issue herein, being in substance as follows:

That at and a long time before the alleged contract of shipment was entered into, it was a violation of the laws of Texas to transport or bring Louisiana cattle into the State of Texas; that the cattle involved were Louisiana cattle, and were delivered to a connecting line of defendant at Plain Dealing, Louisiana, on August 27, 1897, and their transportation demanded by plaintiff and his assignors. That prior thereto, and on June 7, 1897, the Live Stock Sanitary Commission of Texas, acting within the scope of its authority, made among others the following orders:

"From this time forth until the 15th day of November, 1897, no cattle, mules or horses are to be transported or driven into the State of Texas from the State of Louisiana. The Live Stock Sanitary Commission of the State of Texas hereby orders that any violation of the aforesaid rules and regulations by moving any cattle, mules or horses out of Louisiana into the State of Texas is contrary to said rules and regulations, and shall be an offense and punishable as provided by the laws of Texas."

Defendant further alleged that said order was immediately thereafter duly published and promulgated according to law, and that the same, and the quarantine rules and regulations therein contained, took effect and were in force from the date of the order.

That plaintiff, and his assignors, had due notice of said order at the time the shipment was made, but that defendant and its connecting carrier, from which said shipment was received, were

without notice of the same; and that defendant did not know of the same until the cattle had arrived at their destination. "That it received said cattle involved in this controversy at Texarkana, Texas, from the carrier which had brought them to that station from Plain Dealing, Louisiana, as it was compelled under the law to do when freight of any character is tendered to it in apparent good order." That after the arrival of said cattle at their destination, defendant for the first time learned of the existence of the 'quarantine regulation' aforesaid; that it immediately made application to the Live Stock Sanitary Commission of Texas, asking its permission to deliver said cattle to plaintiff, which was promptly refused, and said cattle were ordered by said commission to be taken out of the State. That it was thereby compelled by law to return said cattle to the station and to the carrier from which it received them. That said connecting carrier returned the cattle to Plain Dealing, Louisiana, and there tendered them to plaintiff and his assignors, but that said tender was wholly declined. That plaintiff's own acts in knowingly violating the laws of Texas contributed to and brought about the injury, if any, complained of, and even though defendant should be charged with notice, plaintiff was not entitled to recover. (Rec. 4 and 5.)

Defendant's second special plea set up a limitation in the bill of lading, wherein it stipulated that, in the event of loss or damage to the cattle the measure of damages should be the market value of the cattle at time and place of shipment, that is, Plain Dealing, Louisiana. It further pleaded by way of set-off, the sum of fifty dollars freight charges, and the sum of ninety-one dollars, charges for feeding and taking care of said cattle. (Rec. 5 and 6.)

To defendant's first special plea, plaintiff answered by supplemental petition, and both by special exceptions and special pleas, challenged the sufficiency of its said plea, justifying its acts in refusing to deliver said cattle to the owners, and alleged that said order of the Live Stock Sanitary Commission of Texas, if construed as contended for by defendant, was in violation of Section 8 of Article I of the Constitution of the United States, and an attempt to regulate and impose restrictions upon commerce between the State of Louisiana and the State of Texas. That defendant's answer failed to show that the cattle in controversy were afflicted with the disease of Charbon or Anthrax, as named in the order of said commission, and pleaded affirmatively, that in truth and in fact, said cattle were not afflicted with disease, but were in all respects sound and healthy. (Rec. p. 6.)

Plaintiff also excepted to the defendant's plea, setting up the stipulation in the bill of lading, limiting the measure of damages to the market value of the cattle at time and place of shipment, and alleged that the same was void as against public policy and the laws of Texas. (Rec. p. 7.)

Upon the issues thus joined, the case was tried by the Court without a jury, and judgment rendered for the plaintiff for the market value of the cattle at Fort Worth, less the freight charges. (Rec. 7 and 8.)

Defendant filed its motion for a new trial, and the same being overruled it perfected its appeal to the Court of Civil Appeals of the Second Supreme Judicial District of Texas, assigning error on the trial Court's conclusions of fact and law. (Motion for new trial, Rec. p. 13; order on same, Rec. p. 14; Appeal Bond p. 14; assignment of errors 15 to 17.)

There being no statement of facts in the record, nor requests for additional findings. Nor were any of the findings either of fact or law excepted to.

The Trial Court's conclusions were as follows:

1. I find that the shipment of cattle in controversy was upon a through bill of lading issued by the St. Louis & Southwestern Railway Company, and that Plain Dealing, La., was the initial point of shipment, and Fort Worth, Tarrant County, Texas, the point of destination.

2. The defendant, the St. Louis & Southwestern Railway Company of Texas, connected with the former named railroad at Texarkana, Texas, and the cattle were delivered to defendant at Texarkana by the connecting line, and the same was a through and continuous shipment from said Plain Dealing, La., to place of destination.

3. The bill of lading was executed on the 27th day of August, 1897, and the cattle reached Fort Worth on the evening of the 28th of said month, and upon their arrival the owners were ready to receive the same, and the said owners, at Fort Worth, Texas, tendered the amount of freight, to-wit: $50, to the defendant railroad company, and demanded the cattle, and the said tender of freight charges and demand for the delivery of the cattle at Fort Worth, Texas, was refused by defendant.

4. The cattle remained in the pens of defendant until August 31, 1897, and the stock yards at Fort Worth refused to receive said cattle in their pens, on account of the proclamation of the Governor of Texas, quarantining Louisiana cattle; and defendant also made application to the Live Stock Sanitary Commission of Texas for permission to deliver said cattle to the owners thereof, and, on account of the Governor's proclamation against Louisiana cattle, the same was refused; and thereafter said defendant shipped said cattle back to Texarkana, Texas, and there delivered them to the line of railway from which defendant received them, which line returned said cattle to Plain Dealing, Louisiana, and there tendered said cattle to the shippers, who refused to receive them; and said line, after properly advertising them at the place from which they were received, sold said cattle, and tendered $299.20, the proceeds thereof, less pasturage at Plain Dealing, Louisiana, to the owners of said cattle, which also was refused.

5. At the time said cattle were received at Plain Dealing, Louisiana, and at the time of their arrival at Fort Worth, and the tender of freight charges made to the defendant by the owners of the cattle, the Live Stock Sanitary Commission had recommended the adoption of the following regulations with reference to Louisiana cattle: "The Texas Live Stock Commission has

reason to believe that Charbon or Anthrax has, or is liable to break out in the State of Louisiana, and from this time forth until the 15th day of November, 1897, no cattle, mules or horses are to be transported or driven into the State of Texas from the State of Louisiana." And C. A. Culberson, Governor of Texas, on the 5th day of June, 1897, in conformity with law, regularly promulgated said order and regulations of said commission by proclamation (a full copy of which is hereto attached and made a part hereof); and the quarantine thereby established against cattle in Louisiana was in full force at the time of the shipment in question, if the same was a valid quarantine regulation.

6. The bill of lading under which said cattle were shipped contained in the following stipulations: "That in case of a total loss of any of the live stock covered by this contract for any cause for which the first party will be liable, payment thereof will be made on the basis of actual cash value at the time and place of shipment, but in no case to exceed $100 for each horse, pony, gelding, mare, stallion, mule or jack; $50 for each ox, $30 for each cow, $10 for each calf or hog, $3 for each sheep or goat; and in case of injury or partial loss, the amount of damages claimed was not to exceed the same proportion." The contract for the shipment of said cattle was in writing and signed by the carrier, and also by R. F. Miller, shipper, who acted for himself and as agent for the other owners of the cattle shipped; and, among other things, said contract contains the following agreement: "That, for the consideration and for the covenants and conditions therein contained, the said first party (meaning the initial carrier) will transport for the said second party the live stock described below, and the parties in charge thereof, as hereinafter provided, viz., one car said to contain forty-six head of stock cattle from Plain Dealing, Louisiana station, to Fort Worth station, consigned to W. P. Smith, at the rate of $50 per car from Plain Dealing, Louisiana, to Fort Worth, Texas, subject to the minimum weights and length of car specified and provided for in tariff; said rate being less than the rate charged for shipments transported at carrier's risk; for which reduced rate and other considerations, it is mutually agreed between the parties hereto as follows: First: It is mutually agreed that, if the destination of such cars be beyond the line of the initial carrier, then said initial carrier agrees, and it and each connecting carrier in turn is hereby authorized to deliver said car to its connecting carrier for transportation, under the terms, stipulations, limitations and agreements herein contained; and each and every carrier receiving said cars for transportation shall be deemed to adopt the terms and conditions hereof, and assume the like liabilities, and shall be entitled to all the provisions, exemptions from, and limitations of liability, and other stipulations, covering the measure and adjustment of damages herein contained. "I further find that said cattle were traded for in exchange for horses and mules, no money being paid for them, and were shipped after the promulgation establishing the quarantine regulations above mentioned.

7. All the interest of the shippers and owners of said cattle, and proceeds thereof, and all the claims arising out of the transaction involved in this suit, had been transferred before suit, by the respective owners of said cattle, to-wit: S. P. Clark, W. A. Madox, H. P. Miller, J. S. Collier and J. A. J. Reeves, to the plaintiff herein, and he is now the owner of all claims arising therefrom; and said cattle were Louisiana cattle, traded for in and around Plain Dealing, Louisiana, and, at the time they were received by defendant at Texarkana, defendant had no actual notice of the orders of the Live Stock Sanitary Commission and the Governor's proclamation, but the owners of said cattle did have actual knowledge of the promulgation of the above mentioned proclamation by the Governor.

8. It is agreed in this cause, by written agreement on file, that there were forty-six head of cattle comprehended in this shipment, of age and character as follows: Eighteen cows, six of which had calves following them; seven one-year-old steers; three heifers, two years old each; six two-year-old steers; one heifer one year old; one bull, two years old; one bull, three years old, and one four years old; and two three-year-old steers. And I further find that the actual fair market value of said cattle at the time of their arrival at Fort Worth, and the refusal of the tender of the freight charges, in the Fort Worth market, was the sum of $610. And I further find that the amount of freight due defendant is the sum of $50.

9. The actual cash fair market value of said cattle at the time and place of shipment, to-wit, Plain Dealing, Louisiana, was the sum of $299.20.

10. Defendant Railway Company and its connecting line at Texarkana are common carrier for hire. (Rec. p. 8 to 11.)

(EXHIBIT A.)

The proclamation of the Governor (Exhibit A) referred to, is as follows: "Whereas, the Live Stock Sanitary Commission of Texas has this day recommended the adoption of the following regulations: 'The Live Stock Sanitary Commission of the State of Texas has been reliably informed that the cattle, mules and horses in the southern portion of Jefferson County, State of Texas are affected with disease, known as 'Charbon' or 'Anthrax,' and are liable to impart such disease to cattle, mules or horses ranging in upper portion of Jefferson and other counties. From this time forth; to the 15th day of November, 1897, no cattle, mules, or horses are to be transported or driven north or west of Taylor and Salt Bayous, said bayous running across the southern portion of Jefferson County, State of Texas. This order is given for the purpose of quarantining all cattle, mules and horses south and east of Taylor and Salt Bayous."

"The Texas Live Stock Commission has reason to believe that Charbon or Anthrax has or is liable to break out in the State of Lou-

isiana. From this time forth, until the 15th day of November, 1897, no cattle, mules or horses are to be transported or driven into the State of Texas from the State of Louisiana. The Live Stock Sanitary Commission of the State of Texas hereby order that any violation of any of the aforesaid rules and regulations, by moving of any cattle, mules or horses north of said bayous, or out of Louisiana, into the State of Texas, is contrary to said rules and regulations, and shall be an offense, and punishable as provided by the laws of the State of Texas.

"Now, Therefore, I, C. A. Culberson, Governor of Texas, in conformity with the provisions of chapter 7, title 102, of the Revised Statutes of Texas of 1895, do hereby declare that the quarantine lines, rules and regulations set forth in the above recited order of the Live Stock Sanitay Commission of Texas shall be in full force and effect from and after this date. In witness whereof, I have hereunto set my hand, and caused the seal of the State to be affixed, at Austin, this 5th day of June, A. D., 1897. C. A. Culberson, Governor of Texas." (Rec. p. 12.)

The Trial Court found the following conclusions of law:

1. "The quarantine regulation above mentioned, established by the Governor of the State, is a regulation of or an interference with interstate commerce, in that its effect is to prohibit the importation of all cattle from the State of Louisiana into the State of Texas, whether affected with or capable of communicating the disease mentioned in said proclamation or not, and it is therefore void, as being in contravention of Section 8, of Article I, of the Constitution of the United States. Had the Live Stock Sanitary Commission of the State found upon investigation that Charbon or Anthrax had broken out among the entire cattle of the State of Louisiana, and that all cattle of the State of Louisiana were liable to communicate either of said diseases to cattle of the State of Texas, and had said proclamation of the Governor been based upon said finding, then I think it would have been in law a police regulation of no greater scope than necessary to the protection of cattle in the State of Texas, and therefore valid, even though it did interfere with interstate commerce.

2. The stipulation into the contract of shipment, limiting the damages in case of total loss of cattle to the actual cash value thereof at the time and place of shipment to a fixed sum per head is contrary to law, and therefore void; the correct measure of damages in such cases being the reasonable market value of the cattle so lost at the point of destination.

3. The plaintiff is entitled to recover of the defendant the sum of $610, the value of the cattle lost by him at the time and place of destination, less the sum of $50, freight charges due defendant for said shipment, leaving a balance of $560, together with the interest thereon from August 28, 1897, up to the present time, at the rate of 6 per cent. per annum, making a total of $578.10, and judgment is rendered accordingly." (Rec. 10 and 11.)

The Court of Civil Appeals of Texas sustained the defendants; first assignment of error, complaining of the Trial Court's first

conclusion of law wherein it held the defendant's plea, justifying the alleged conversion of the cattle by reason of the order of the Live Stock Sanitary Comission of Texas, bad, as in conflict with the Commerce Clause of the Constitution of the United States, and reversed and rendered the case for defendant. See opinion of Court of Civil Appeals. (Rec. 19 to 29.)

Plaintiff thereupon filed his motion for a rehearing, as required by the rules of practice of Texas (Rec. p. 30-32) and the same being refused (Rec. p. 32) he made application to the Supreme Court of Texas, for a writ of error, and this being refused (Rec. p. 32, 33), he applied for, and was granted, a writ of error from this Court by the Chief Justice of said Court of Civil Appeals of Texas (Rec. 35, 36), and brings this case to this Court for revision and correction upon the errors assigned.

First Assignment of Error.

The Honorable Court of Civil Appeals erred in sustaining Appellant's first assignment of error, and in holding that the alleged recommendation adopted by the Live Stock Sanitary Commission of the State of Texas, prohibiting the importation of all cattle, mules and horses from the State of Louisiana into the State of Texas from the 6th day of June, 1897, to the 15th day of November of said year, and the proclamation of the Governor of Texas, putting said recommendation in force as set forth in said proclamation, as appears from a copy of the same and identified as "Exhibit A" in the record and set out in the Court's opinion (herein) was not a burden upon and an undue interference with commerce between the said State of Louisiana and the State of Texas, and an invasion of the powers of congress to regulate commerce between the said two States. (Rec., p. 37.)

Second Assignment of Error:

The Court erred in impliedly holding that the recommendation of the said Live Stock Sanitary Commission above mentioned was a quarantine measure within the police power of the State to adopt and enforce. (Rec., p. 37.)

PROPOSITION UNDER THE PRECEDING ASSIGNMENTS:

The finding by the Live Stock Sanitary Commission of Texas, that it "has reason to believe that Charbon or Anthrax has or is liable to break out in the State of Louisiana," could not, under the most liberal construction justify its executive in enforcing an absotute embargo against the importation of all Louisiana cattle. The attempted exercise of such a power under the state of facts shown is void,

as in conflict with Clause 3, Section 8, Article I, of the Constitution of the United States, empowering congress to regulate commerce among the several States, and for the following reasons:

First. **It is not a quarantine order in any just and legal sense.**

Second. **It makes no provision for inspection or examination to prevent discrimination against cattle not afflicted with or capable of communicating the disease named.**

Third. **It passes beyond all reasonable and necessary measures to protect the live stock industry of the State.**

Fourth. **Its effect is to discriminate in favor of Texas cattle as against the cattle of Louisiana, under the pretense of exercising its police power for sanitary purposes.**

Fifth. **It shows to have been improvidently made. It is not based upon facts, but upon a mere rumor, to-wit:**

"The Texas Live Stock Commission has reason to believe that Charbon has or is liable to break out in the State of Louisiana," and for that reason violates a well settled rule of limitation, which forbids any interference by the States with interstate commerce, except upon the highest grounds of public necessity, to be invoked and exercised in a proper manner and under a state of facts authorizing the just application of the spirits of the maxim "the safety of the people is the supreme law."

Sixth. **The natural and reasonable effect of said order is not only to prohibit the importation of all cattle, mules or horses raised or kept in Louisiana, but to prohibit their transportation across that State from beyond its borders. It matters not where the shipment may have originated, provided the highways of the two States were to be used for the purpose of effecting the shipment.**

STATEMENT.

(See exhibit "A," proclamation in full, page 6 of this brief.)

AUTHORITIES

Railway Company vs. Husen, 95 U. S., 168.
Henderson et al., vs. Mayor of New York, et al., 92 U. S., 265.
Schollenberger vs. Pennsylvania, 171 U. S., 4
Bowman vs. Chicago & Northwestern Railway Company, 125, U. S., 473.

Leisey vs. Hardin, 135 U. S., 100.
Scott vs. Donald, 165 U. S., 59.
Morgan vs. Louisiana, 118 U. S., 445.
Muggler vs. Kansas, 123 U. S., 623.

ARGUMENT.

May it please the Court: Articles 5043a and 5043b of the Revised Statutes of Texas, 1895, provide for the creation and qualification of a Live Stock Sanitary Commission of the State of Texas to consist of three members appointed by the Governor of the State.

By Article 5043c it is made the duty of the commission to "protect the domestic animals from all contagious or infectious diseases of a malignant character, whether said disease exists in Texas or elsewhere; and for this purpose they are authorized and empowered to establish, maintain and enforce such quarantine lines and sanitary rules and regulations as they may deem necessary. It shall also be the duty of said commission to co-operate with the Live Stock Commissioners and officers of other States and Territories, and with the United States Secretary of Agriculture, in establishing such interstate quarantine lines, rules and regulations as shall best protect the live stock industry of this State against Texas or Splenetic fever."

Article 5043d provides for the enforcement of the orders and regulations adopted by the commission by proclamation of the Governor of the State:

Article 5043 i authorizes the commission to call upon any Sheriff, Deputy Sheriff or Constable to execute their orders, and provides that such officers shall obey their orders.

An examination therefore of the preceding provisions of the Texas Statutes will disclose that the authority to establish the quarantine, so called, in the present case, was exercised under the first clause of Article 5043c; as the only conditions under which the commission is empowered to co-operate with the authorities of other states and Territories or with the Secretary of Agriculture of the United States, are those where it is thought necessary to protect against Texas or Splenetic fever.

As plaintiff in error must concede in this Court, that the power to establish and enforce the order in question was vested in the Live Stock Sanitary Commission of Texas, in so far as the State of Texas could confer such authority, this issue we believe is therefore directly presented.

May the State of Texas under the finding made by its Live Stock Sanitary Commission, in this case absolutely prohibit the importation of all cattle, mules or horses from another State without making any provision for quarantine and inspection, or providing any methed whatever for a determination of the question as to whether the facts exist, justifying it in suspending the right and privilege of engaging in that business?

In the light of the decisions above cited we respectfully submit there can be but one answer.

In the course of the opinion of the Honorable Court of Civil Appeals (Rec. p. 28) it is said: "The facts in the case are not disputed. The plaintiff sues as for a conversion because of a refusal to deliver his cattle at Fort Worth: It is necessary to his recovery that he show that it was the legal duty of the defendant to make such delivery. It is for the breach of this duty he sues; yet it nowhere appears from the record that before the quarantine line in question was established the Sanitary Commission did not make the most careful and thorough investigation into the necessity therefor, if, indeed, that matter could in any event be inquired into.

So far as the record shows every animal of the kind prohibited in the State of Louisiana may have been actually afflicted with Charbon or Anthrax."

We understand the Court to mean from the foregoing, not that the presumption arises, that all cattle, mules and horses in the State of Louisiana were afflicted with the disease of Anthrax or Charbon, but that it should have been shown by plaintiff such was not their condition before the authority of the Commission to enforce the order contained in the Governor's proclamation, could be assailed by him.

There exists, we believe, two fatal objections to this position. The first is, the power to regulate or in anywise interfere with commerce among the States is vested primarily, and in general exclusively, with the authorities of the Federal Government, acting under the laws of Congress. If this power may ever be exercised by a State in any state of case, it can only be when the danger is so imminent and of a character so fatal, as to preclude the adoption of any other known means less than absolute prohibition to avert injury to its inhabitants, or their property; therefore, while not admitting that this exception in favor of the States has ever been expressly recognized in any given case, certainly if it does exist, one setting up a right by virtue of such an authority, will, in every instance, be held to show a state of facts creating ground for exception. The argument of the learned Chief Justice of the Court of Civil Appeals, would, if followed, lead to this conclusion. It would be to say to plaintiff in error, it is true the right you claim is one directly protected by the Constitution of the United States, yet in extreme cases an exception may exist authorizing the State of Texas to suspend this right; you have not shown that this exception does not exist—this we submit is not the law. If, however, proof were required to show that the order of the commission, as promulgated by the Governor of Texas, was not supported by any evidence tending to establish such general prevalence of the disease named in the State of Louisiana, it is to be found in the language of the order, as follows: "The Texas Live Stock Commission has reason to believe that Charbon or Anthrax has or is liable to break out in the State of Louisiana." What, may it please, is the reasonable and natural inference to

be drawn from this language? Certainly nothing more than the Commission had been reliably informed that *somewhere* in the State of Louisiana the diseases named had or was about to break out.

We believe this Court will, if it should accede the authority to exist under such a finding, announce a doctrine not supported by any of its decisions heretofore published.

We believe this case to be controlled by the principles announced in the case of the Railway Co. vs. Husen, supra, and which have been so often cited with apparent approval by this Court in the later cases

It may be possible, had it been shown in that case, that during certain months of the year the disease called in the Missouri statute, "Spanish or Texas Fever," now generally known as "Texas or Splenetic Fever," would inevitably be communicated to the cattle of Missouri as a result of the importation of Texas, Mexican, or Indian cattle into the State of Missouri during the period named in the Missouri statute, it might have fallen within, and been controlled by, the doctrine enunciated in the later cases of Kimmish vs. Ball, 129 U. S., 217, and M. K. & T. Ry. vs. Haber, 169 U. S., 613.; also Hennington vs. Georgia, 163 U. S., 300.

Still we do not believe the rule of limitation announced in that decision and so often quoted, has ever been modified or questioned.

It is true in the case of Morgan vs. Louisiana, 118 U. S. p. 463, it is said, in construing the statute of Louisiana involved in that case, that "undoubtedly it (the statute) is in some sense a regulation of commerce. It arrests a vessel on a voyage which may have been a long one. It may affect commerce among the States when the vessel is coming from some other State of the Union than Louisiana and it may affect commerce with foreign nations when the vessel arrested comes from a foreign port. This interruption of the voyage may be for days or for weeks. It extends to the vessel, the cargo, the officers and seamen, and the passengers." Nevertheless the statute was upheld for it was, in fact, a quarantine regulation, not shown to have been unreasonable or unlike similar regulations in force in every port of the world requiring the adoption of such measures.

The order of the Live Stock Sanitary Commission of Texas is not a quarantine measure, it is simply prohibition.

May it please the Court: There is one other observation of the Court of Civil Appeals we believe should be noticed. After referring to the fact that plaintiff in error had notice of the quarantine and defendant had not, the Court says, "It was also shown that after such notice was brought home to appellant it sought permission of the Sanitary Commission to deliver the cattle. The Sanitary Commission ruled and ordered otherwise. (Rec. p. 28.) This conclusion of fact as announced by the Court of Civil Appeals, we submit is not borne out by the conclusions of fact made by the Trial Court. The Trial Court in its fourth finding of fact,

states that the stockyards at Fort Worth refused to receive said cattle, and then defendant applied to the Live Stock Commissioner for permission to deliver the cattle to the owner, this the commission refused on account of the Governor's proclamation. See Record pages 8 and 9. The record does not show that the commission took any other notice of the request. It possibly considered that the matter had passed beyond their jurisdiction after the issuance of the proclamation. In connection with the preceding quotation, from the opinion of the Court of Civil Appeals the opinion continues as follows: "In this attitude of the case, appellee insists that it was the legal duty of appellant to deliver the cattle in question, and yet he did not even show that the very cattle for the value of which he sues were free from the disease mentioned. So far as the record before us shows, they may every one have been so affected. We are asked to presume to the contrary." We do not remember to have asked for such a presumption. We supposed, and so far as we understand the position of counsel for defendant, it was thought by them, that their defense must stand or fall by a just interpretation of the language of the finding of the Commission and proclamation of the Governor.

Defendant pleaded the order and proclamation; to its plea plaintiff replied by exception and plea, in substance, that the authority to absolutely prohibit the importation of the cattle in question under the state of facts set forth in the finding and proclamation did not exist, and could not be justified as a reasonable exercise of the police power of the State. That it was void as an obstruction of commerce between the State of Texas and the State of Louisiana. Thus the issue was made and the case tried. No where in the record of the trial Court proceedings is there found even a suggestion that the cattle were suffering with disease of any kind: On the other hand, defendant's answer says "it received said cattle involved in this controversy at Texarkana, Texas, from the carrier which brought them to that station from Plain Dealing, Louisiana, as it was compelled under the law to do when freight of any character is tendered to it in apparent good order." (Rec. p. 5.)

The Trial Court found in its conclusions of fact that there were forty-six head of cattle, a mixed lot, with a market value at Fort Worth of $610 (Rec. p. 10). Certainly, cattle afflicted with the fatal disease of Charbon or Anthrax would not bring their full market value.

If, may it please the Court, the State of Texas may impose restrictions upon the commerce of Louisiana whenever the products of that State are sought to be brought into competition with its own, all that is necessary if defendant's contention in this case be sound, is for it to establish a quarantine, so called, against the Louisiana product by simply having its Governor issue a proclamation declaring his belief or that of some bureau acting in an advisory capacity to the executive department, that the importation into the State of Texas of the Louisiana product would be detrimental to the health or property of the people of Texas. Such an exercise of

authority would be practically to annul the spirit and meaning of the third clause of Section VIII, Article I, of the Constitution of the United States.

The 4th assignment of error presents this issue:

The Court erred in not taking into consideration and in not finding that Congress, by the Act of May 29, 1884, (23, Stat. of L., Chap. 60) known as the "Animal Industry Act," together with the Acts of March 31, 1891 (56 Stat. of L., 1040, 1049, chap. 544), and that of August 8, 1894 (Section 2, chap. 238); also that of April 14, 1896, (chap. 140, p. 108) appropriating money to carry out the provisions of that act, covered substantially the whole subject of transportation from one State to another State, live stock liable to impart or capable of communicating infectious or contagious diseases, and in not holding that the State of Texas had no authority without co-operating with the Secretary of Agriculture of the United States before attempting to adopt quarantine lines between the State of Louisiana and the State of Texas; for appellee says, that by the acts mentioned, Congress had provided for a general system of quarantine and had adopted means for the regulation of shipments of cattle, liable to impart or capable of communicating infectious or contagious diseases, from one State to another. (Rec. p. 37, 38.)

This assignment is urged with the statement that the issue it presents is one, the discussion of which the attorney for plaintiff in error, barely finds courage to venture upon, and that only in a general way.

This Court, has in a number of cases held State legislation, which incidentally affected interstate commerce, a valid exercise of the power and authority of the State to regulate the relative rights and duties of all persons within its jurisdiction so far as to provide for the public good and the public convenience.

A forcible illustration of this recognition we believe to be presented in the two cases of Hennington vs. Georgia, before cited and Lake Shore & Michigan Southern Railway Company vs. State of Ohio. (173 U. S., 286.)

This recognition, however, has almost in every case been accompanied with the statement that when Congress acts with reference to a matter confided to it by the Federal Constitution, then it displaces all State regulations touching the matter. Without attempting an extended discussion of the question presented by this assignment, it seems to us, that the original act mentioned, and the subsequent ones referred to, manifest an unquestioned intention on the part of Congress to confine the power of establishing quarantine lines, to prevent the transportation of cattle affected with a contagious or infectious disease, from one State to another, to a bureau of the Department of Agriculture.

It may be said, that had Congress so intended it would have so stated, explicitly. But it must be understood that while the power of saying, when and where such lines shall exist, may be

exercised by the authorities of the National Government to the exclusion of State authority, the States are not thereby remediless.

The power of eminent domain and of condemnation still rests with the States; though the State may not establish a line across which the right to engage in interstate commerce can be by it suspended after Congress has acted.

May it please the Court:

The amount involved in this controversy is small, the questions raised, however, are believed to be important and serious. Somewhere in the opinions of this Court, it has been said in substance, that the humble character of the litigant before this Court, but to a still higher degree, challanges its close and conscientious attention to the issues involved. To this sentiment, if it may be so denominated, plaintiff in error now appeals with the added statement, that he regrets his inability to have this case presented, in a way that would render the Court greater assistance in determining the issues involved.

We respectfully ask that in the event this Court agrees with the Trial Court on the question involved herein, that the judgment of the Court of Civil Appeals be reversed and that of the District Court of Tarrant County, Texas, be affirmed. The only other issue raised by defendant in the Court of Civil Appeals was its complaint that the Trial Court failed to uphold the stipulation in the bill of lading, limiting the measure of recovery to the value of the cattle at the points of shipment in Louisiana. Such stipulations are held void as against public policy by the Courts of Texas.

Houston & Texas Central Railway Company vs. Davis, 11 Court of Civil Appeals of Texas Reports, page 29, citing Railway Company vs. Maddox, 75 Texas (F. C.), and Railway vs. Ball, 80 Texas (S. C.) 603.

Railway vs. Arnold, 17th Court of Civil Appeals Reports, 74.

Respectfully submitted,

F. E. Albright

Wallace Lubbock

Attorneys for plaintiff in error,

W. P. Smith.

No. 155.

Brf. of West for D. E.

Office Supreme Court U.S.
FILED
DEC 26 1900
JAMES H. McKENNEY,
Clerk.

Filed Dec. 26, 1900.

IN THE

Supreme Court of the United States.

W. P. SMITH,
Plaintiff in Error,

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
Defendant in Error.

No. 155.

BRIEF FOR DEFENDANT IN ERROR.

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Nixon-Jones Printing Co., 315 Pine St., St. Louis. W

IN THE

Supreme Court of the United States.

W. P. SMITH,
PLAINTIFF IN ERROR,

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
DEFENDANT IN ERROR.

Error to the Court of Civil Appeals, Second Supreme Judicial District of Texas.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT.

MAY IT PLEASE THE COURT:

From the allegations of the petition of plaintiff in error, and the undisputed facts appearing in the

7, title 102 of the Revised Statutes of Texas of 1895, do hereby declare that the quarantine lines, rules and regulations set forth in the above recited order of the Live Stock Sanitary Commission of Texas, shall be in full force and effect from and after this date.

In witness whereof I have hereunto set my hand, and caused the seal of State to be affixed at Austin, this 5th day of June, A. D. 1897.

(Seal.) C. A. CULBERSON,
Governor of Texas.

By the governor:
J. W. MADDEN,
Secretary of State."
(Pr. R., pp. 9, 12.)

IV.

At the time of the shipment of said cattle, and of their carriage by defendant in error, plaintiff in error and his co-owners had actual knowledge of the existence and promulgation of the above quoted quarantine regulation, but defendant in error did not have (Pr. R., p. 10, paragraph 7th).

V.

The trial court found as a fact, as follows: —

"I further find that said cattle were traded for in exchange for horses and mules, no money being paid for same, and were shipped after the promulgation

of the proclamation establishing the quarantine regulations above mentioned."

"The actual cash, fair market value of said cattle at the time and place of shipment, to wit: Plain Dealing, La., was the sum of $299.20.

VI.

The cattle reached Fort Worth, Texas, on the evening of the 28th of August, 1897, where the owners tendered the amount of freight and demanded the delivery of said cattle, which was refused. The cattle remained in the pens of defendant in error until August 31st, 1897, and the stock yards at Forth Worth refused to receive said cattle in their pens on account of the proclamation of the governor of Texas quarantining Louisiana cattle; and the defendant in error made application to the Live Stock Commission of Texas for permission to deliver said cattle to the owners thereof, which was refused, and defendant in error shipped said cattle back to Texarkana, and there deliver them to the line of railway from which it received them, which line returned said cattle to Plain Dealing, Louisiana, and there tendered them to the shipper, who refused to receive them; and said connecting line, after properly advertising them, at the place from which they were shipped, sold said cattle and tendered the owners thereof $299.20, the proceeds of sale, which was also refused.

POINT FOR CONSIDERATION.

Were the quarantine regulations and orders of the Live Stock Sanitary Commission of Texas, promulgated by the proclamation of the Governor of said State, a valid exercise of the police powers of the State and binding upon its citizens?

ARGUMENT

At the time of the institution of this suit, and until it was determined by the appellate court of Texas, there had been no decision by the courts of last resort in Texas, or elsewhere, as to the validity of the legislation herein involved. Manifestly the situation of the defendant in error was a serious one.

If the position taken by plaintiff in error, that when Congress has legislated at all upon a subject-matter within its province, its action is prohibitive of all State legislation, whether it incidentally affects commerce or not, be correct, then defendant in error is utterly without legal right or remedy; for, if the rule be applicable to the legislation in question, then it could be contended with equal force that where Congress has failed to legislate upon a matter within its sphere, such failure is equivalent to saying that such matter was to be left free of statutory regulations by the several States.

In Leisy v. Hardin, 135 U. S. 100, this court said: "Hence, inasmuch as interstate commerce consisting in the transportation, purchase, sale, and exchange of commodities, is national in its character, and must be governed by uniform system, so long as Congress does not pass any law to regulate it, or allowing the States to do so, it thereby indi-

cates its will that such commerce shall be free and untrammeled."

Clearly, the doctrine announced in the above quotation must be taken in connection with the qualifications placed thereon by various decisions of this court, especially with reference to the rights of the States to protect the public health, public morals and public safety. We particularly refer to the recent case of Mo. K. & T. Ry. Co. v. Haber, 169 U. S., and quote from page 628, as follows: "This court, while sustaining the power of Congress to regulate commerce among the States, has steadily adhered to the principle that the States possess, because they never surrendered, the power to protect the public health, the public morals and the public safety by any legislation appropriate to that end, which does not encroach upon rights guaranteed by the national constitution, nor come in conflict with acts of Congress passed in pursuance of that instrument. Although the powers of a State must, in their exercise, give way to a power exerted by Congress, under the constitution, it has never been adjudged that that instrument, by its own force, gives any one the right to introduce into a State, against its will, cattle so affected with disease that their presence in the State will be dangerous to domestic cattle."

Plaintiff in error and his associates and co-owners of the cattle placed defendant in error, with actual knowledge of the existence of the quarantine orders, and its promulgation by the governor, in the position where it must either violate a statute of Texas, and be subject to a prosecution, for the penalties

therein prescribed, or to obey the law and subject itself to a suit for damages, at the instance of plaintiff in error.

We submit that under such circumstances a citizen can only elect to obey the law, otherwise every citizen must constitute himself a judicial tribunal, whose decision would be no protection, for whether he decided right or wrong he would be subjected to litigation, either at the hands of the State to recover the penalty, or at the hands of the shipper to recover damages.

In *State* v. *Carroll*, 38 Conn. 449 (9 Am. Rep. 428) the court said: "Every law of the legislature, however repugnant to the constitution, has not only the appearance and semblance of authority, but the force of law. It cannot be questioned at the bar of private judgment, and, if thought unconstitutional, resisted, but must be received and obeyed as, to all intents and purposes, law, until questioned in and set aside by the courts. This principle is essential to the very existence of order in society. It has never been questioned by any jurist to my knowledge." * * *

"The doctrine that a law of doubtful constitutionality may be presumed to be constitutional until judicially decided otherwise, and that a law manifestly unconstitutional can not be so presumed, has no existence as applicable to the citizen. There is a rule of judicial construction adopted by the courts, to the effect that unless the law is clearly unconstitutional, or if it is of doubtful constitutionality, they will not declare it unconstitutional. But that is a

rule of PURELY JUDICIAL CONSTRUCTION, and can have no other application. * * *

"It has never been claimed to my knowledge before, that the citizen may adopt the judicial rule of construction, and treat a law, if manifestly unconstitutional, as without the semblance or color of authority. It is an instance of the misapplication of an unquestioned rule."

State v. *City*, 41 La. Ann. 156, was a mandamus proceeding brought against the Mayor and Council of New Orleans to compel them to make an appropriation for maintenance of the police, the amount of which, by legislative enactment, was fixed at a sum not less than $150,000. The Mayor and Council tried to avoid the law, and set up in their answer that it was unconstitutional. At p. 166, the court said: "A government whose laws can be ignored by those whose duty it is to execute them is feeble, weak and inert, and is wanting in that vigor, strength and energy that will insure its perpetuity. The Mayor and City Council of New Orleans are the officers of a subordinate political corporation, not only charged with municipal duties, but as a constitutional part of the State government they owe allegiance and obedience to their sovereign, the State of Louisiana, whose majesty, dignity and power they must uphold, and whose mandates they must obey. They cannot defy the law, constitute themselves the judges of its constitutionality, and pronounce upon its validity when they are charged with its execution, in advance of the judicial tribunal, whose sole prerogative it is to pass upon its consti-

tutionality. It is their duty to obey the law until the law has been declared null and void by the judicial department of the government."

In *Holden* v. *Hardy*, 169 U. S., at pp. 392, 396, this court said: "While this court has held that the police power can not be put forward as an excuse for oppressive and unjust legislation, it may be lawfully resorted to for the purpose of preserving the public health, safety, or morals, or the abatement of public nuisances, and a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests." Lawton v. Steele, 152 U. S. 133, 136.

"The extent and limitations upon this power are admirably stated by Chief Justice Shaw in the following extract from his opinion in Commonwealth v. Alger, 7 Cush. 84:—

"We think it a settled principle, growing out of the nature of well-ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it may be so regulated that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property in this commonwealth, as well that in the interior as that bordering on tide waters, is derived directly or indirectly from the government, and held subject to those general regulations which are necessary to the common good and general welfare. Rights of

property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as will prevent them from being injurious, and to such reasonable restraints and regulations established by law as the legislature, under the governing and controlling power vested in them by the Constitution, may think necessary and expedient."

In *Mo. K. & T. R. Co.* v. *Haber*, 169 U. S. at page 629, in which case the authorities are collated, this court quotes with approval, the language of the Supreme Court of Vermont in Thorpe v. Rutland & Burlington Railroad Co., 27 Vt. 149, as follows: "Under that power (referring to the police power), this court said that while a State by legislation may not invade the domain of the national government, it may *exclude* from its limits convicts, paupers, idiots, and lunatics, persons likely to become a public charge, as well as persons affected by contagious or infectious diseases — adding that the same principle would justify exclusion of property dangerous to the property of citizens of the State, for example, *animals having contagious or infectious diseases.*' Such exertions of power by a State, it was said, were self-defensive."

In *Kimmish* v. *Ball*, 129 U. S. 217, this court said: "That cattle coming from those sections of the country (referring to Texas and Indian Territory) during the spring and summer months are often infected with a contagious and dangerous fever, is a notorious fact, as is also the fact that cold weather, such as is usual in the winter, north of the

southern boundary of Missouri and Kansas, destroys the virus of the disease, and thus removes all danger of infection."

The appellate court of Texas, in the case now before this court (Pr. R., p. 28) said: "So far as the record shows, every animal of the kind prohibited in the State of Louisiana may have been actually affected with charbon or anthrax, and it is conceded that this is a disease different from Texas or splenetic fever, and that it is contagious and infectious and of the most virulent character."

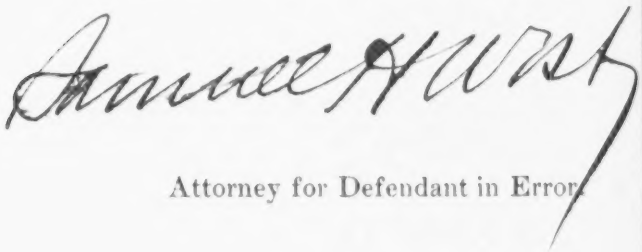
The court will also bear in mind that the Live Stock Sanitary Commission of Texas found, as a matter of fact, "that cattle, mules and horses in the southern portion of Jefferson County, State of Texas, are affected with the disease known as charbon or anthrax, and are liable to impart such disease to cattle, mules and horses ranging in upper portion of Jefferson and other counties," therefore prohibited the transportation of cattle from that section of Texas. Said Live Stock Commission also stated that it had "reason to believe that charbon or anthrax has or is liable to break out in the State of Louisiana" (Pr. R., p. 12).

Upon such findings of fact the quarantine regulations complained of by plaintiff in error were promulgated. It was found as a fact by the Texas Court of Civil Appeals, that no testimony was offered controverting these findings of fact, so announced by the Live Stock Sanitary Commission and the proclamation of the governor, and we submit that in the absence of that proof, upon the findings of

fact so stated, this court will not interfere with or annul the statutory enactments of the State of Texas. For, as was said by Chief Justice Marshall, in Fletcher v. Peck, 6 Cranch, 128: "The question whether a law be void for its repugnance to the Constitution, is, at all times, a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative in a doubtful case. The court, when impelled by duty to render such a judgment, would be unworthy of its station, could it be unmindful of the solemn obligation which that station imposes. But it is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered void."

We submit that the judgment of the Court of Civil Appeals for the District of Texas is right and the judgment should be affirmed.

Respectfully submitted,



Attorney for Defendant in Error.

Supreme Court of the United States.

No. 155.—October Term, 1900.

W. P. Smith, Plaintiff in Error,
vs.
The St. Louis and Southwestern Railway Company of Texas.

In error to the Court of Civil Appeals of the Second Supreme Judicial District of the State of Texas.

[April 22, 1901.]

This case involves the constitutionality of certain quarantine regulations of the State of Texas. The laws of Texas provide for the creation of a Live Stock Sanitary Commission, consisting of three members appointed by the governor, and prescribe their duty. The particular provisions which are material to the case are inserted in the margin.*

The governor of the State issued the following proclamation:

"Whereas, the Live Stock Sanitary Commission of Texas has this day recommended the adoption of the following regulations:

"'The Live Stock Sanitary Commission of the State of Texas have been reliably informed that the cattle, mules and horses in the southern portion of Jefferson County, State of Texas, are affected with disease, known as charbon or anthrax, and are liable to impart such disease to cattle, mules and horses ranging in upper portion of Jefferson and other counties, from this time forth to the 15th day of November, 1897, no cattle, mules or horses are to be transported or driven north or west of Taylor and Salt

*Article 5043c of the Revised Statutes, 1895, provides: "It shall be the duty of the commission provided for in article 5043a to protect the domestic animals of this State from all contagious or infectious diseases of a malignant character, whether said diseases exist in Texas or elsewhere; and for this purpose they are hereby authorized and empowered to establish, maintain and enforce such quarantine lines and sanitary rules and regulations as they may deem necessary. It shall also be the duty of said commission to co-operate with live stock quarantine commissioners and officers of other States and Territories, and with the United States Secretary of Agriculture, in establishing such interstate quarantine lines, rules and regulations as shall best protect the live stock industry of this State against Texas or splenetic fever. It shall be the duty of said commission, upon receipt by them of reliable information of the existence among the domestic animals of the State of any malignant disease, to go at once to the place where any such disease is alleged to exist, and make a careful examination of the animals believed to be

bayous, said bayous running across the southern portion of Jefferson County, State of Texas. This order is given for the purpose of quarantining all cattle, mules and horses south and east of said Taylor and Salt bayous. The Texas Live Stock Commission has reason to believe that charbon or anthrax has or is liable to break out in the State of Louisiana, from this time forth until the 15th day of November, 1897, no cattle, mules or horses are to be transported or driven into the State of Texas from the State of Louisiana. The Live Stock Sanitary Commission of the State of Texas hereby order that any violation of any of the aforesaid rules and regulations by moving of any cattle, mules or horses north of said bayous, or out of Louisiana into the State of Texas, is contrary to said rules and regulations, and shall be an offense and punishable as provided by the laws of the State of Texas:'

"Now, therefore, I, C. A. Culberson, governor of Texas, in conformity with the provisions of chapter 7, title 102, of the Revised Statutes of Texas of 1895, do hereby declare that the quarantine lines, rules and regulations set forth in the above-recited order of the Live Stock Sanitary Commission of Texas shall be in full force and effect from and after this date.

"In witness whereof, I have hereunto set my hand, and caused the seal of the State to be affixed, at Austin, this 5th day of June, A. D. 1897.

"C. A. Culberson,
Governor of Texas."

In consequence of this proclamation the railway company refused to deliver certain cattle to their owners, of whom the plaintiff in error was one, which it had received as freight from a connecting carrier, and which had been delivered to the latter in the State of Louisiana. The facts, or as many of them as is necessary to state, are as follows:

The shipment of cattle was made upon a through bill of lading issued by the St. Louis and Southwestern Railway Company, at Plain Dealing, La., for Fort Worth, Tarrant County, Texas, and was a through and continuous shipment. The cattle arrived at Fort Worth on the 28th of August, 1897. The owners were ready to receive them, and tendered the amount of freight

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affected with any such disease, and ascertain, if possible, what, if any, disease exists among the live stock reported to be affected, and whether the same is contagious or infectious, and if said disease is found to be of a malignant, contagious or infectious character, they shall direct and enforce such quarantine lines and sanitary regulations as are necessary to prevent the spread of any such disease. And no domestic animals infected with disease or capable of communicating the same, shall be permitted to enter or leave the district, premises or grounds so quarantined, except by authority of the commissioners. The said commission shall also, from time to time, give and enforce such directions and prescribe such rules and regulations as to separating, feeding and caring for such diseased and exposed animals as they shall deem necessary to prevent the animals so affected with such disease from coming in contact with other animals not so affected. And the said commissioners are hereby authorized and empowered to enter upon any grounds or premises to carry out the provisions of this act."

due thereon. The tender was rejected, and the delivery of the cattle refused. The cattle remained in the pens of the plaintiff in error, the stockyards at Fort Worth refusing to receive them on account of the proclamation of the governor, and permission, which was asked by the railway company of the Live Stock Sanitary Commission, to deliver them to their owners, was also refused on account of the governor's proclamation. Thereafter the railway company shipped the cattle back to Texarkana, to the line of railway from which they were received, by which line they were returned to Plain Dealing, and there tendered to the shippers, who refused to receive them. Thereupon they were sold, after proper advertising, and the proceeds of the sale, less pasturage at Plain Dealing, were tendered to the owners, which was also refused. At the time of the shipment the Live Stock Sanitary Commission had recommended the adoption of the following regulation with reference to Louisiana cattle:

"The Texas Live Stock Commission has reason to believe that charbon or anthrax has or is liable to break out in the State of Louisiana, and from this time forth until the 15th day of November, 1897, no cattle, mules or horses are to be transported or driven into the State of Texas from the State of Louisiana."

The quarantine established (if valid) was in full force at the time of the shipment of the cattle. The bill of lading contained stipulations as to a measure of damages in case of a total loss of the cattle and other provisions, which, as they do not raise Federal questions, we are not concerned with on this record.

The trial court held that—

"1. The quarantine regulations above mentioned, established by the governor of the State, is a regulation of or an interference with interstate commerce, in that its effect is to prohibit the importation of all cattle from the State of Louisiana into the State of Texas, whether affected with or capable of communicating the disease mentioned in said proclamation or not, and is therefore void as being in contravention of section 8 of article 1 of the Constitution of the United States.

"Had the Live Stock Sanitary Commission of the State found upon investigation that charbon or anthrax had broken out among the entire cattle of the State of Louisiana, and that all cattle of the State of Louisiana were liable to communicate either of said diseases to cattle of the State of Texas, and had said proclamation of the governor been based upon said finding, then I think it would have been in law a police regulation of no greater scope than necessary to the protection of cattle in the State of Texas, and therefore valid, even though it did interfere with interstate commerce."

It also held that the stipulation in the contract of shipment limiting the damages at a fixed sum per head was void, and gave judgment for the actual cash value of the cattle, less freight charges. The judgment amounted to $578.10.

The judgment was reversed by the Court of Civil Appeals, and thereupon the Chief Justice of that court granted this writ of error. Before the commencement of the action the plaintiff in error became the vendee of the interests of the other owners.

Mr. Justice McKENNA, after making the foregoing statement, delivered the opinion of the Court.

There are other questions in the record besides the Federal one, upon which the writ of error is based. They seem not to have been earnestly pressed either in the trial court or in the Court of Civil Appeals. They were not passed on by either court. The Court of Civil Appeals, however, said:

"It was shown that appellee's vendors had actual notice of the quarantine, and that appellant had not. It was also shown that after such notice was brought home to appellant it sought permission of the sanitary commission to deliver the cattle. The sanitary commission ruled and ordered otherwise. It has been given power to make rules. It has the power to call upon the sheriff and peace officers to enforce them. It was the duty of such officers to obey the orders of such commission. Our law also provides heavy penalties for a violation of the rules and regulations of the sanitary commission."

It is possible that the court may have concluded that the defense which those facts suggest could not be made by the railway company, and that, notwithstanding, the plaintiff in error could compel the company to receive his cattle and force it to contest the constitutionality of the Texas statute either by resisting the imposition of its penalties or in some other way. At any rate, the court rested its decision on the statute, holding it valid, and it is its judgment which we are called upon to review.

To what extent the police power of a State may be exerted on traffic and intercourse with the State without conflicting with the commerce clause of the Constitution of the United States has not been precisely defined. In the case of *Henderson et al.* v. *Mayor of New York et al.*, (92 U. S. 259,) it was held that the statute of the State, which, aiming to secure indemnity against persons coming from foreign countries becoming a charge upon the State, required ship owners to pay a fixed sum for each passenger—that is, to pay for all passengers—not limiting the payment to those who might *actually* become such charge, was void. Whether the statute would have been valid if so limited was not decided.

In *Chy Lung* v. *Freeman et al.*, (Id. 275,) a statute declaring the same purpose as the New York statute, and apparently directed against persons mentally and physically infirm, and against convicted criminals and immoral women, was also declared void, because it imposed conditions on all passengers and invested a discretion in officers which could be exercised against all passengers. The court, by Mr. Justice Miller, said:

"We are not called upon by this statute to decide for or against the right of a State, in the absence of legislation by Congress, to protect herself by necessary and proper laws against paupers and convicted criminals from abroad; nor to lay down the definite limit of such right if it exists. Such a right can only arise from a vital necessity for its exercise, and cannot be carried beyond the scope of that necessity. When a State statute, limited to provisions necessary and appropriate to that object alone, shall, in a proper controversy, come before us, it will be time enough to decide that question."

In *Railroad Company* v. *Husen*, (95 U. S. 465,) a statute of Missouri which provided that "no Texas, Mexican or Indian cattle shall be driven or otherwise conveyed into or remain in any county in this State between the first day of March and the first day of November in each year by any person whatever," was held to be in conflict with the clause of the Constitution which gives to Congress the power to regulate interstate commerce.

The case was an action for damages against the railroad company for bringing cattle into the State in violation of the act. A distinction was made between a proper and an improper exertion of the police power of the State. The former was confined to the prohibition of actually infected or diseased cattle and to regulations not transcending such prohibition. The statute was held not to be so confined, and hence was declared invalid.

The relation of the police power of a State and the power of Congress to regulate commerce came up again in *Brannan* v. *Chicago &c. Ry. Co.*, (125 U. S. 465.) The principle which underlies both powers and the range and operation of those powers were considered. The action was against the railroad company for refusing to transport beer from Chicago to Marshalltown in Iowa. The refusal was attempted to be justified under a statute of Iowa against traffic in intoxicating liquors and the conveyance of the same by an express or railway company into the State except under certain conditions. The statute was decided to be a regulation of commerce—to be not within the police power of the State, and therefore void. *Leisy* v. *Hardin*, (135 U. S. 100,) is of the same general character, and need not be commented upon. See also *Scott* v. *Donald*, (165 U. S. 59.)

In *Schollenberger* v. *Pennsylvania*, (171 U. S. 1,) some prior cases were reviewed, and the court, speaking by Mr. Justice Peckham, said:

"The general rule to be deduced from the decisions of this court is that a lawful article of commerce cannot be wholly excluded from importation into a State from another State where it was manufactured or grown. A State has power to regulate the introduction of any article, including a food product, so as to insure purity of the article imported, but such police power does not include the total exclusion even of an article of food.

"In *Minnesota* v. *Barber*, (136 U. S. 313,) it was held that an inspection law relating to an article of food was not a rightful exercise of the police power of the State if the inspection prescribed were of such a character or if it were burdened with such conditions as would wholly prevent the introduction of the sound article from other States. This was held in rela-

tion to the slaughter of animals whose meat was to be sold as food in the State passing the so-called inspection law. The principle was affirmed in *Brimmer* v. *Rebman*, (138 U. S. 78,) and in *Scott* v. *Donald*, (165 U. S. 58, 97.)"

The exclusion in the case at bar is not as complete as in the cited cases. That, however, makes no difference if it is within their principle, and their principle does not depend upon the number of States which are embraced in the exclusion. It depends upon whether the police power of the State has been exerted beyond its province—exerted to regulate interstate commerce—exerted to exclude, without discrimination, the good and the bad, the healthy and the diseased, and to an extent *beyond what is necessary for any proper quarantine*. The words in italics express an important qualification. The prevention of disease is the essence of a quarantine law. Such law is directed not only to the actually diseased but to what has become exposed to disease. In *Morgan* v. *Louisiana Board of Health*, (118 U. S. 455,) the quarantine system of Louisiana was sustained. It established a quarantine below New Orleans, provided health officers and inspection officers, and fees for them to be paid by the ships detained and inspected. The system was held to be a proper exercise of the police power of the State for the protection of health, though some of its rules amounted to regulations of commerce with foreign nations and among the States. In *Kimmish* v. *Ball*, (129 U. S. 217,) certain sections of the laws of Iowa were passed on. One of them imposed a penalty upon any person who should bring into the State any Texas cattle unless they had been wintered at least one winter north of the southern boundary of the State of Missouri or Kansas; or should have in his possession any Texas cattle between the first day of November and the first day of April following. Another section made any person having in his possession such cattle liable for any damages which might accrue from allowing them to run at large, "and thereby spreading the disease among other cattle, known as the Texas fever," and there was besides criminal punishment. The court did not pass upon the first section. In commenting upon the second, some pertinent remarks were made on the facts which justified the statute, and the case of *Railroad Company* v. *Husen*, *supra*, was explained. It was said that the case "interpreted the law of Missouri as saying to all transportation companies, 'You shall not bring into the State any Texas cattle or any Mexican cattle, or Indian cattle between March 1st and December 1st in any year, no matter whether they are free from disease or not, no matter whether they may do an injury to the inhabitants of the State or not; and if you do bring them in, even for the purpose of carrying them through the State without unloading them, you shall be subject to extraordinary liabilities.' (p. 473.) Such a statute, the court held, was not a quarantine law, nor an inspection law, but a law which interfered with interstate commerce, and

therefore invalid. At the same time the court admitted unhesitatingly that a State may pass laws to prevent animals suffering from contagious or infectious diseases from entering within it. (p. 472.) No attempt was made to show that all Texas, Mexican, or Indian cattle coming from the malarial districts during the months mentioned were infected with the disease, or that such cattle were so generally infected that it would have been impossible to separate the healthy from the diseased. Had such proof been given, a different question would have been presented for the consideration of the court. Certainly all animals thus infected may be excluded from the State by its laws until they are cured of the disease, or at least until some mode of transporting them without danger of spreading it is devised."

In *Missouri, Kansas & Texas Railway* v. *Haber*, (169 U. S. 613,) the Husen case was again commented upon, and what the law of Missouri was and was not was again declared. A statute of Kansas, however, which made any person who shall drive or ship into the State "any cattle liable or capable of communicating Texas, splenetic or Spanish fever to any domestic cattle of the State liable for damages," was held not to be a regulation of commerce. It was also held that the statute was not repugnant to the act of Congress of March 29, 1884, (23 Stat. 31, c. 60,) known as the Animal Industry Act.

What, however, is a proper quarantine law—what a proper inspection law in regard to cattle—has not been declared. Under the guise of either a regulation of commerce will not be permitted. Any pretense or masquerade will be disregarded, and the true purpose of a statute ascertained. (*Henderson* v. *Mayor of New York*, and *Chy Lung* v. *Freeman*, *supra*.) But we are not now put to any inquiry of that kind. The good faith and sincerity of the Texas officers cannot be doubted, and the statutes under which they acted cannot be justifiably complained of. The regulations prescribed are complained of, but are they not reasonably adaptive to the purpose of the statutes—not in excess of it? Quarantine regulations cannot be the same for cattle as for persons, and must vary with the nature of the disease to be defended against. As the Supreme Court of Tennessee said: "The necessities of such cases often require prompt action. If too long delayed the end to be attained by the exercise of the power to declare a quarantine may be defeated and irreparable injury done."

It is urged that it does not appear that the action of the Live Stock Sanitary Commission was taken on sufficient information. It does not appear that it was not, and the presumption which the law attaches to the acts of public officers must obtain and prevail. The plaintiff in error relies entirely on abstract right, which he seems to think cannot depend upon any circumstances or be affected by them. This is a radical mistake.

It is the character of the circumstances which gives or takes from a law or regulation of quarantine a legal quality. In some cases the circumstance would have to be shown to sustain the quarantine, as was said in *Kennish* v. *Ball, supra.* But the presumptions of the law are proof, and such presumptions exist in the pending case arising from the provisions of and the duties enjoined by the statute and sanction the action of the sanitary commission and the governor of the State. If they could have been they should have been met and overcome, and the remarks of the Court of Civil Appeals become pertinent:

"The facts in this case are not disputed. The plaintiff sues as for a conversion, because of a refusal to deliver his cattle at Fort Worth. It is necessary to his recovery that he show that it was the legal duty of the defendant company to make such delivery. It is for the breach of this alleged duty he sues; yet it nowhere appears from the record that before the quarantine line in question was established the sanitary commission did not make the most careful and thorough investigation into the necessity therefor, if, indeed, that matter could in any event be inquired into. So far as the record shows, every animal of the kind prohibited in the State of Louisiana may have been actually affected with charbon or anthrax, and it is conceded that this is a disease different from Texas or splenetic fever, and that it is contagious and infectious and of the most virulent character."

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 155.—October Term, 1900.

W. P. Smith, Plaintiff in Error, vs. The St. Louis and Southwestern Railway Company of Texas. } In error to the Court of Civil Appeals of the Second Supreme Judicial District of the State of Texas.

[April 22d 1901.]

Mr. Justice Harlan, dissenting.

I am unable to concur in the opinion and judgment of the court. The grounds of my dissent are these: (1) The railroad company was bound to discharge its duties as a carrier unless relieved therefrom by such quarantine regulations under the laws of Texas as were consistent with the Constitution of the United States. It could not plead in defense of its action the quarantine regulations adopted by the State Sanitary Commission and the proclamation of the Governor of that State, if such regulations and proclamation were void under the Constitution of the United States. (2) The authority of the State to establish quarantine regulations for the protection of the health of its people does not authorize it to create an embargo upon all commerce involved in the transportation of live stock from Louisiana to Texas. The regulations and the Governor's proclamation upon their face showed the existence of a certain cattle disease in one of the counties of Texas. If under any circumstances that fact could be the basis of an embargo upon the bringing into Texas from Louisiana of all live stock during a prescribed period, those circumstances should have appeared from the regulations and the proclamation referred to. On the contrary, there does not appear on the face of the transaction any ground whatever for establishing a complete embargo for any given period upon all transportation of live stock from Louisiana to Texas.

I think therefore that the regulations and proclamation upon which the defendant relied were to be deemed void and therefore inapplicable to the particular transportation referred to in the complaint.

It seems to me that the present case comes within the principles announced in *Henderson* v. *Mayor*, 92 *U. S.* 259. That case involved the validity of a statute of New York having for its object the protection of the people of that State against the immigration of foreign paupers. It was held by this court to be unconstitutional, because "its practical result was to impose a burden upon *all* passengers from foreign countries." In that case it was

said that in whatever language a statute was framed, its purpose must be determined by its natural and reasonable effect. So also in *Railroad Co.* v. *Husen*, 95 *U. S.* 465, 473, we held that a statute of Missouri relating to the bringing into that State of any Texas, Mexican or Indian cattle between certain dates was a plain intrusion upon the exclusive domain of Congress. This court said: "It is not a quarantine law. It is not an inspection law. It says to all natural persons and to all transportation companies, 'You shall not bring into the State any Texas cattle or any Mexican cattle or Indian cattle, between March 1st and December 1st in any year, no matter whether they are free from disease or not, no matter whether they may do an injury to the inhabitants of the State or not; and if you do bring them in, even for the purpose of carrying them through the State without unloading them, you shall be subject to extraordinary liabilities.' Such a statute, we do not doubt, is beyond the power of a State to enact. To hold otherwise would be to ignore one of the leading objects which the Constitution of the United States was designed to secure." What was said of the Missouri statute may be repeated as to the regulations adopted by the Sanitary Commission and the proclamation of the Governor of Texas forbidding the bringing of cattle into that State from Louisiana. The result in my judgment is, in view of our former decisions, that the quarantine regulations and proclamation in question involved, by their natural and practical operation, an unauthorized obstruction to the freedom of interstate commerce. This must be so, even if the statute of Texas, reasonably interpreted, was itself not repugnant to the Constitution of the United States.

Mr Justice WHITE authorizes me to say that he concurs in these views.

True copy.

Test:

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[April 22, 1901.]

Mr. Justice Brown dissenting.

The law of Texas for the creation of a live stock sanitary commission, cited in the opinion of the court, provides that "it shall be the duty of said commission, upon receipt by them of reliable information, . . . of any malignant disease, to go . . . and make a careful examination of the animals believed to be affected, . . . and if said disease is found to be of a malignant, contagious or infectious character, they shall direct and enforce quarantine lines and sanitary regulations as to prevent the spread of any such disease. And no domestic animals affected with disease, or capable of communicating the same, shall be permitted to enter or leave the district, premises or grounds so quarantined, except by authority of the commissioners."

I had supposed the authority of the commissioners to be fixed by this act, and their right to quarantine or forbid the entry of animals was limited to such as were infected with disease or capable of communicating the same.

The proclamation of the governor, based upon the report of the sanitary commission, covers two separate classes of cases. It finds that cattle in the southern portion of Jefferson County, Texas, are affected with disease and liable to impart such disease to cattle ranging in the upper portion of Jefferson and other counties, and therefore forbids such cattle from being transported north or west of certain bayous running across the southern portion of Jefferson County. So far the order is within the statute.

But it also finds that the commission "has reason to believe that charbon and anthrax has (broken out) or is liable to break out in the State of Louisiana," and hence that no cattle are to be transported into Texas from Louisiana. This portion of the order seems to me a plain departure from the terms of the statute. It does not find that there are cattle in Louisiana "infected with disease or capable of communicating the same,"

but simply that the disease is liable to break out in that State. It does not even find that it has broken out, or that there are any cattle in that State capable of communicating the disease. If the fact that a contagious disease is liable to break out in a certain locality be sufficient to justify a quarantine against such locality, then it is possible that every port of the United States may quarantine against Cuban or other West Indian ports, since it is a well-known fact that yellow fever is liable to break out there at almost any time, and especially during the summer months.

The sweeping nature of this order is manifest by comparing it with the first order relating to the Jefferson County cattle. There is a finding there that the cattle in the southern portion of a particular county "are affected with disease, known as charbon or anthrax, and are liable to impart such disease to cattle" ranging in the upper portion of Jefferson County, and therefore no cattle shall be transported north or west of the infected district. In other words, it finds the actual existence of disease within a definite and circumscribed locality, and prohibits the transportation of cattle from such locality to non-infected districts.

On the other hand, the second order assumes to quarantine against cattle from the entire State of Louisiana, without any finding that the disease has broken out there, or that the cattle in such State are liable to communicate such disease to other cattle. The order is not limited to cattle coming from any particular portion of the State, but applies to the whole State, regardless of the actual existence of the disease or the liability to communicate contagion.

It seems to me that the proclamation goes far beyond the authority of the statute, beyond the necessities of the case, and is a wholly unjustifiable interference with interstate commerce. The statute thus construed puts a power into the hands of a sanitary commission which is liable to be greatly abused and to be put forward as an excuse for keeping out of Texas perfectly healthy animals from other States, and putting a complete stop to a large trade.

In the case of the *Missouri &c. R. R. Co.* v. *Haber*, (169 U. S. 613,) the statute of Kansas in question applied only to "cattle capable of communicating, or liable to impart what is known as Texas, splenetic or Spanish fever to any domestic cattle" of the State, and was a proper exercise of the power of quarantine, since healthy cattle were not interfered with. These were substantially the terms of the Texas statute, to which I see no objection; but the action of the commission was a plain departure from the terms of the statute, and I think unauthorized by law. It was practically as sweeping as the statute of Missouri, condemned by this court in *Railroad Co.* v. *Husen*, (95 U. S. 465,) which provided that "no Texas, Mexican or Indian cattle shall be driven or otherwise conveyed into, or remain, in any county in this State, between the first day of March and the first day of November

in each year, by any person or persons whatever," regardless of the fact whether these cattle were diseased or were capable of communicating disease. This was held to be in conflict with the interstate commerce clause of the Constitution. As justly observed of the opinion in that case by the court in its opinion in this case, "a distinction was made between a proper and an improper exertion of the police power of the State. The former was confined to the prohibition of actually infected or diseased cattle, and to regulations not transcending such prohibition. The statute was held not to be so confined, and hence was declared invalid." This is the precise objection I make to the finding of the commission, and to the proclamation of the governor in this case.

It is sufficient to say of the finding of the Supreme Court of Texas that "so far as the record shows, every animal of the kind prohibited in the State of Louisiana may have been actually affected with charbon or anthrax," that there is no such finding in the report of the commission or in the governor's proclamation, and that, under the statute, there must be a finding either of disease or of a liability to communicate disease, to justify the action of the commission. It cannot of its own motion put in force the quarantine laws of the State without the finding of some facts that such enforcement is necessary to the protection of Texas cattle. I am therefore constrained to dissent from the opinion of the court.

True copy.

Test:

Clerk Supreme Court, U. S.